Annual Report of
The Ombudsman Hong Kong
2011



We discover and discern

Office of The Ombudsman, Hong Kong



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Vision

To ensure that Hong Kong is served by a fair and efficient public administration which is committed to accountability, openness and quality of service

Mission

Through independent, objective and impartial investigation, to redress grievances and address issues arising from maladministration in the public sector and bring about improvement in the quality and standard of and promote fairness in public administration

Functions

The Ombudsman should serve as the community's watchdog to ensure that:

- Bureaucratic constraints do not interfere with administrative fairness
- Public authorities are readily accessible to the public
- Abuse of power is prevented
- Wrongs are righted
- Facts are pointed out when public officers are unjustly accused
- Human rights are protected
- The public sector continues to improve quality and efficiency

Values

- Maintaining impartiality and objectivity in our investigations
- Making ourselves accessible and accountable to the public and organisations under our jurisdiction
- According the public and organisations courtesy and respect
- Upholding professionalism in the performance of our functions

Performance Measures

- Speed of case work
- Complainants' level of satisfaction with case handling
- Redress obtained
- Recommended improvement measures committed to and/or implemented
- Non-repetition of complaints

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History in Brief

1988

20 July

The Commissioner for Administrative Complaints ("COMAC") Bill was passed by the Legislative Council ("LegCo")

1993

21 July

Legislative review completed, the COMAC (Amendment) Bill was introduced into LegCo



First Commissioner Mr Arthur Garcia, JP

1989

1 February

The COMAC Ordinance was enacted
First Commissioner Mr Arthur Garcia, JP assumed office

1 March

The Office of COMAC became operational with staff seconded from Government

15 November

COMAC became a member of the International Ombudsman Institute ("IOI")

1994

1 February

Second Commissioner Mr Andrew So, JP assumed office

24 June

The COMAC Ordinance was amended:

- to enable the public to lodge complaints directly, instead of by referral from LegCo Members
- to extend the jurisdiction to some major statutory bodies
- to empower the Commissioner to publish anonymised investigation reports
- to empower the Commissioner to initiate direct investigation



Second Commissioner Mr Andrew So, JP

1994

30 June

Advisers were appointed to provide expert advice and professional opinion

1 July

Chinese title of the Commissioner was changed to「申訴專員」and the Office to「申訴專員公署」



Appointment of Advisers

1995

1 March

Jurisdiction was extended to investigation into alleged breach of Code on Access to Information

23-25, 27 October

The Commissioner hosted the 15th Australasian and Pacific Ombudsman Conference and the International Ombudsman Symposium

1996

1 March

Non-official Justices of the Peace ("JPs") were enlisted in a JPs Assistance Scheme

15-16 April

The Ombudsman's Office participated in the establishment of the Asian Ombudsman Association ("AOA") and became a founding member

12-13 June

First Complaint Management Workshop for public officers was organised

5 September

Resource Centre was opened

24 October

The Ombudsman was elected to the Board of Directors of the IOI

27 December

English titles were changed to "The Ombudsman" and "Office of The Ombudsman"

1997

1 April

Mediation service was launched as an alternative dispute resolution method

25 July

The Ombudsman's Awards were introduced to acknowledge public organisations handling complaints positively

1998

8 May

The Ombudsman was elected Secretary of the AOA



First Complaint Management Workshop



Third Ombudsman Ms Alice Tai, JP

1999

1 April
Third Ombudsman Ms Alice Tai, JP assumed office

22 July
The Ombudsman's Awards were extended to acknowledge public officers' contribution towards better quality services

2000

27 July
The Ombudsman's Awards were further extended to acknowledge public officers handling complaints professionally

2 November
The Ombudsman was elected to the Board of Directors of the IOI

2001

28 March
Telephone complaint service was introduced

19 December
The Ombudsman (Amendment) Ordinance 2001 came into operation:

- to establish The Ombudsman as a corporation sole with full powers to conduct financial and administrative matters
- to empower The Ombudsman to set terms and conditions of appointment for staff
- to adopt systems and processes separate from Government



Permanent Office at Shun Tak Centre

2002

6 September
Office moved to permanent accommodation at Shun Tak Centre in Sheung Wan

16 October
The Ombudsman was elected Secretary of the IOI

2004

1 April
Ms Alice Tai, JP started her second term (2004 – 2009) as The Ombudsman

10 September
The Ombudsman was re-elected as Secretary of the IOI

13 December
With the departure of the last civil service secondee, this Office was staffed by a workforce entirely appointed by The Ombudsman under The Ombudsman Ordinance



Signing of MAA

2005

24 October

A "Memorandum of Administrative Arrangements" ("MAA") was signed between the Director of Administration and The Ombudsman to set out the general principles and guidelines governing the administrative arrangements for this Office

28 November - 1 December

The Ombudsman hosted the 9th AOA Conference

2008

5-8 November

The Ombudsman hosted the Board of Directors Meeting of the IOI



IOI Board Meeting



Fourth Ombudsman Mr Alan Lai Nin, GBS, JP

2009

1 April

Fourth Ombudsman Mr Alan Lai Nin, GBS, JP assumed office

11 June

The Ombudsman was re-elected to the Board of Directors of the IOI

2010

19 October

The Ombudsman was elected Treasurer of the IOI

The Ombudsman's Review



The word "change" has been trumpeted so much in recent times that it has more or less become a cliché. Yet, without change, there can be no improvement.

Streamlined Procedures

To start with, my Office has reviewed and streamlined our complaint handling procedures. We are acutely aware of our mission to offer a simple, effective and inexpensive means to redress grievances. As such, we always strive for simplicity and efficiency, without sacrificing fairness and accuracy. For general cases, we will continue to make use of our power of "preliminary inquiries" under The Ombudsman Ordinance for speedy conclusion, without resorting to the more time-consuming process of full investigation. However, we find our previous classification of such inquiries into "Internal Complaint Handling Programme" and "Rendering Assistance and Clarification" too rigid. We have thus decided to change this classification and re-term the process simply as "inquiry", whereby we may, in appropriate cases, ask the organisation under complaint to respond to our Office and the complainant in parallel. In this way, complainants may hear the words from the horse's mouth, and comment on them before we draw our conclusion.

As a corollary of this change, we have screened in more cases for inquiry. This means more work but I think it is worthwhile – complainants get speedier response; organisations hear more of the community's voices; and our Office improves in work quality. If these cases had been screened out, organisations would never have learned about the grievances, justified or not, of the people they served; and complainants would have been deprived of an official explanation from the organisations they complained against.

Engaging Stakeholders

This year, we have taken a step forward in embracing the concept of "stakeholder engagement", which has become a buzzword in the public sector and private sector alike. Owing to the secrecy provision in the Ordinance, this Office had for good reasons in the past generally refrained from sharing with the public information on our investigations and their outcomes. We did inform the public of our work and invite public contributions to topics under direct investigation through a limited number of press conferences and media releases. Nevertheless, I recognise the merits of reaching out to our stakeholders, for example, our Advisers, Justices of the Peace who have joined our JPs Assistance Scheme, concern and interest groups, to increase public awareness of our role and services, identify major issues for investigation and to obtain professional advice as well as information on public needs and aspirations.

In this light, we have for the first time organised two seminars, one for our Advisers on our 2010 Annual Report and the other involving both the Advisers and Justices of the Peace as well as Government representatives on the problem of "water seepage in private buildings".

We have also been liaising closely with our Advisers in the legal field on the issues of complainees' right of hearing under the Ordinance and how to determine whether one is an "aggrieved" person qualified to lodge a complaint with this Office.

In conducting direct investigations we have also taken a more active approach in soliciting views from concern and interest groups, such as patient groups in our study on the non-emergency ambulance service and schools and parents in the study on education for students with emotional and behavioural difficulties.

We will continue to promote the public's awareness of and gauge their views on our services. This will help ensure that our work is in tune with the values of the community.

Championing Change

Turning to the Administration, at the risk of sounding tedious, I would like to urge for redoubled efforts to tackle issues which have seen little change or improvement.

My observation is that there is still a tendency for some departments to take things for granted. This inertia reflects that their management has failed to change with time, ignoring the advancement of modern technology in the provision of public service and the rise in public expectations.

It is unfortunate that on many occasions, changes are introduced by some departments only as a result of public pressure or complaints. This is certainly unsatisfactory. I would urge that department heads take the initiative of reviewing their existing ways of doing things to ensure that they are valid in present day circumstances.

My predecessor and I have time and again highlighted the lack of coordination and rapport among Government departments in coping with various issues. I am disappointed to note that the compartmental mentality still persists. Examples abound this year. The problem of illegal parking of bicycles at transport interchanges, the lack of an agreed process in dealing with complaints and enquiries on burial sites for indigenous villagers, the failure to monitor allocated Government land, ineffective enforcement action against unauthorised building works in New Territories exempted houses, etc all pointed to the same old problem. Likewise, the issue of water seepage as mentioned above and that of rampant on-street promotional and trading activities have remained unresolved. Such compartmental mentality often also resulted in unnecessary delay in handling complaints including some very minor ones, and caused further grievances to members of the public.

The Administration has yet to demonstrate enough vigour and drive in pulling together various government bureaux and departments to implement the necessary measures or changes. Where responsibilities cut across more than one department and involve different bureaux, the natural tendency of the departments is to defend their turf and ignore the others. Worse still, there was general reluctance for department heads to escalate the unresolved issues to a higher level. From the public's viewpoint, this is unacceptable. For the general public, there is only one government. Division of labour and responsibilities is an internal issue which should never impact upon the quality of service rendered. Public administration is about government serving the community and finding solutions in a coordinated and cooperative manner. When matters fall through the gaps, the public and the whole Administration suffer.

Complaint Culture

People have increasingly talked about Hong Kong as a city of complaints. Officials often bemoan the rise in complaints, both in numbers and ferocity, which certainly adds to their already heavy workload. Let me first reassure public organisations and their staff that our role is an impartial adjudicator, not advocate for any particular party. Where complainants are found to be unreasonable or irresponsible, dishonest or irrational, we do not hesitate to point out the truth. We set ourselves the task to discover and discern.

All complaints, including those unsubstantiated ones, provide us with valuable feedback and serve as a barometer of community concern. For the past two decades, the Office of The Ombudsman has dedicated itself to promoting a positive complaint culture and improving the quality of public administration in society. We see ourselves as a catalyst and an avenue to channel the negative energy of grievances to instill positive changes. I am delighted to witness the fine efforts of many public service providers, who view complaints as opportunities for review, improvement and enhancement. It is heartening to note that, over the years, an overwhelming majority of the recommendations made by this Office have been accepted and implemented. I hope that this trend will continue.

In ending this review, we mourn the passing of Mr Arthur Garcia, the first Ombudsman (then known as Commissioner for Administrative Complaints). During his term of office (1989 – 1994), Mr Garcia had laid a robust foundation for this Office and firmly established our principles of legality, fairness, impartiality and reasonableness. He will be missed.

Alan N Lai
The Ombudsman
31 March 2011



Chapters

Chapter 1

Our Role and Jurisdiction

1.1 Established in 1989 by The Ombudsman Ordinance ("the Ordinance"), Cap 397 of the Laws of Hong Kong, the Office of The Ombudsman is the city's independent watchdog of public administration. We investigate actions by Government departments and public bodies for administrative deficiencies and recommend remedial measures. In this context, we foster good public administration for responsive and responsible governance that is also fair and open.

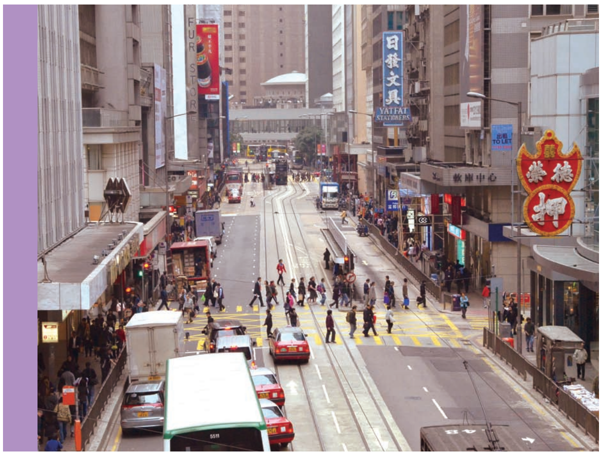


Jurisdiction

1.2 The Ombudsman has powers to investigate complaints of maladministration by the Government departments and public bodies listed in Part I of Schedule 1 to the Ordinance (see **Annex 2**). We are always on the lookout, and maintain close contact with the Administration, for possible additions to the Schedule. The latest additions, in July 2010, are the Auxiliary Medical Service, the Civil Aid Service, the Consumer Council and the Estate Agents Authority.

1.3 Besides investigating complaints, The Ombudsman may also, in the absence of complaints, initiate direct investigation into areas of systemic maladministration and significant issues in the public interest.





1.4 According to section 2 of the Ordinance, "maladministration" generally refers to poor, inefficient or improper administration including unreasonable conduct; abuse of power or authority; unreasonable, unjust, oppressive or improperly discriminatory procedures and delay; discourtesy and lack of consideration for others.

1.5 The Hong Kong Police Force, the Independent Commission Against Corruption and two other organisations in Part II of Schedule 1 to the Ordinance (see **Annex 2**) are not subject to investigation, except for cases of non-compliance with the Code on Access to Information[1].

Actions Not for Investigation

1.6 The Ombudsman's purview is not without prohibition. Cases related *inter alia* to legal proceedings or prosecution decisions, contractual and other commercial transactions, personnel matters and imposition or variation of conditions of land grant are out of bounds. A full list of such prohibitions is at **Annex 3**.

Restrictions

1.7 The Ordinance also prescribes other circumstances under which The Ombudsman shall not conduct an investigation. For example, the complainant has had knowledge of the subject of complaint for over two years, is anonymous, or is not the person aggrieved or a suitable representative of that person. Such restrictions are also detailed at **Annex 3**.

1.8 Nevertheless, in some cases, The Ombudsman has discretion whether or not to conduct, or discontinue, an investigation. A case may be taken up, for instance, if the complainant is able to explain satisfactorily why the complaint could not have been lodged within two years.

[1] The Code was introduced in 1995 to make available to the public as much Government-held information as possible, unless there are valid reasons – related to public, private or commercial interests – to withhold it. It applies to all Government departments, the Hong Kong Monetary Authority and the Independent Commission Against Corruption.

Chapter 2

Investigation Procedures

Complaint Handling

Modes of Complaint

2.1 Complaints may be lodged in person, by letter sent by post or by fax, or on our postage-free complaint form. They may also be made by telephone for simple cases involving not more than two organisations.



Fig. 2.1 Staff receiving telephone enquiries/complaints

2.2 We also accept complaints via email. However, for security of the information, they must be digitally signed under proper electronic certification. Otherwise, we have to respond by post to guard against disclosure, as we are required by law to maintain strict secrecy under penalty of a fine and imprisonment.

2.3 As email communication is becoming increasingly popular, we are exploring secure alternatives that would be more user-friendly.

Complainants' Representation

2.4 For a complaint made by an individual, he/she should normally be the person aggrieved unless that person is unable to act for himself/herself (see **para. 1.7** of Chapter 1).

2.5 For a complaint made on behalf of a body corporate, the complainant has to satisfy The Ombudsman that the body corporate has authorised him/her as its representative (section 10(1)(da) of the Ordinance). The Ombudsman will allow legal representation if he thinks it justified.

Topical Complaints

2.6 From time to time, we receive complaints from more than one person, more or less concurrently, in respect of a particular current issue or hot topic. We term such cases "topical complaints" to distinguish them from complaint cases on disparate issues or topics, so as to reflect more accurately our caseload and the frequency of complaint against different organisations.

Assessment

2.7 Our Assessment Team usually screens all incoming complaints within a day or two upon receipt to examine whether they come within the statutory purview of The Ombudsman and whether they have a *prima facie* case to warrant investigation. The Team will seek further information or clarification from the complainant if necessary.

2.8 Cases "screened in" go to one of our six investigation teams for inquiry, resolution by mediation or full investigation. For the rest, a recommendation will be made to The Ombudsman for not pursuing the case.



Fig. 2.2 Team meeting

2.9 Where The Ombudsman decides not to pursue a case, we aim to notify the complainant of the reason(s) within 15 working days (see **Annex 14** for our performance pledges). Even with complaints "screened out" because the complainants are anonymous, unidentifiable or not personally aggrieved, we do not discard them but examine them for any pattern of systemic or systematic maladministration. This may prompt topics for direct investigation (see **paras. 2.23 – 2.24**).

2.10 In some cases not pursued, as the complainants may be in need of services from some Government departments or public bodies, we take it upon ourselves to advise them where and how to get such services.

2.11 We operate a Duty Officer Scheme under which investigation officers are available to receive new complainants to secure essential information on their cases for assessment and to brief them on our procedures and restrictions.



Fig. 2.3 Duty officer receiving a member of the public

2.12 On appeal by complainants of cases "screened out", the Assessment Team will "re-assess" such cases for reasons to "re-open" the matter. The Team will then present its recommendation to The Ombudsman for decision as to whether the case should be re-opened for inquiry.

Inquiry

2.13 The Ordinance provides that for the purposes of determining whether to undertake a full investigation (see **paras. 2.16 – 2.17**), The Ombudsman may conduct such "preliminary inquiries" as he considers appropriate. In the interest of complainants, we often use this procedure to resolve complaint cases of a general nature more speedily, without unnecessarily resorting to the more time-consuming action of full investigation.

2.14 Hitherto, we have classified "preliminary inquiries" into two methods:

(a) Internal Complaint Handling Programme ("INCH") –

We ask the organisation under complaint to reply direct to the complainant, with a copy to us. We may request specific information from the organisation, monitor progress and scrutinise its reply. Where the reply is not satisfactory, we may inquire further or start a full investigation.

(b) Rendering Assistance and Clarification ("RAC") –

We collect key facts relating to the case from the organisation under complaint. If the matter can be fairly and fully explained, we will present our findings to the complainant and make suggestions to the organisation concerned for remedy and improvement where necessary.

2.15 The above classification is somewhat artificial and difficult to comprehend. Sometimes, cases have been dealt with by a combination of the two methods to enable the complainant to receive a more expeditious response from the organisation or to enable our Office to obtain further details for more in-depth analysis. We have, therefore, decided to cease this classification and adopt a single term to describe the procedure:

> Inquiry –
>
> We ask the organisation under complaint to respond to us and, if we see fit, to the complainant in parallel. We will examine such response, the complainant's view on it, if applicable, together with any other relevant information or evidence we have collected. We will, in conclusion, present our findings to the complainant and make suggestions to the organisation for remedy or improvement where necessary. Where deeper and fuller probing is needed before we can conclude the case, we will start a full investigation.



Fig. 2.4 Staff conducting inquiry

Full Investigation

2.16 For complex cases involving issues of principle, serious maladministration, gross injustice, systemic flaws or procedural deficiencies, our Office will conduct a full investigation.

2.17 This is an extensive and intensive process of probing to establish the facts. Apart from examining documents, we may summon witnesses, counter-check data with the complainant and go on site inspections. Where necessary, we will consult members of our Panel of Advisers, who are all experts with good standing in professional fields (see **Annex 16**).

2.18 We will also invite comments on our preliminary observations from any organisation or individual that may be criticised or adversely affected. When finalised, the report will be presented to the complainant for information and to the head of the organisation concerned for implementation of our recommendations.

2.19 In our investigation reports, complaints are classified according to how far the allegations of maladministration are well founded: "substantiated", "partially substantiated" or "unsubstantiated". In some cases, although the specific allegations in the complaint are unsubstantiated, other significant acts or aspects of maladministration are identified. These are then classified as "substantiated other than alleged". The different categories of outcome are defined in the **Glossary of Terms** (see **Annex 1**).

Review

2.20 Complainants dissatisfied with our findings or conclusions may seek a review of their cases. Such requests first go through the original investigator, who will examine the complainant's grounds for review and submit his or her view to the Chief Investigation Officer of the team. The latter will take a fresh look at the case, focusing on any fresh evidence or new angles, and arrange seeking of further information or comments from the organisation under complaint if necessary. The relevant Assistant Ombudsman will seek a decision from The Ombudsman, via the Deputy Ombudsman, as to whether the request for review should be entertained and, if so, whether the original conclusion should be upheld or varied.

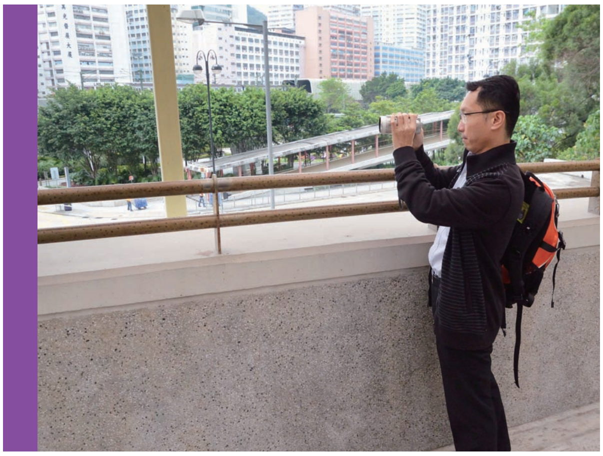


Fig. 2.5 Staff conducting site inspection



Fig. 2.6 Consensus achieved after mediation

Mediation

2.21 With the consent of both the complainant and the organisation under complaint, The Ombudsman may try to settle a case by mediation. This alternative method for dispute resolution is suitable for cases involving only minor or no maladministration. The two parties meet to explore a mutually acceptable solution. Our investigators trained in mediation act as impartial mediators.

2.22 If mediation fails to resolve the matter, or the complainant requests to reactivate his complaint, our Office will assign another investigator to initiate an inquiry or a full investigation afresh. This is to ensure objective processing not influenced by prior knowledge from the mediation meeting.

Direct Investigation

2.23 The Ombudsman's power to conduct direct investigations ("DIs") in the absence of complaints enables him to review matters at a macro level, as opposed to individual cases. Essentially, this means examining systems with systemic or widespread deficiencies.

Selection of Issues

2.24 A DI may be prompted by significant topical issues of community concern, implementation of new or revised Government policies or repeated complaints of particular matters. These include cases which may have been "screened out" during our assessment process but which show some pattern of systemic problems or systematic maladministration (see **para. 2.9**).

DI Assessment

2.25 Before deciding whether or not to launch a DI against an organisation, we may conduct an initial assessment ("DI assessment"). For this purpose, we research public information from annual reports and websites, legislation and media reports, as well as information from the organisation direct. If such assessment points to the need for further study, we will formally notify the head of the organisation and initiate a DI.

2.26 Where our DI assessment finds no significant maladministration or the organisation concerned has made proactive improvement, we will not initiate a DI. We will conclude our study and offer our findings to the organisation. Where appropriate, we make suggestions for improvement.

Investigation Methodology

2.27 The procedures for DI are akin to those for investigation into individual complaints. Unlike the latter, however, it is our usual practice to declare publicly our initiation of DIs and openly invite views from relevant sectors and experts as well as the community at large, as the issues investigated tend to have wide impact on the public.

2.28 In the course of our investigation, we also often meet with senior officers of the organisation to discuss our preliminary findings. Such exchanges are useful in clarifying points for possible incorporation into our report and furthering better insight into the issues as well as greater mutual understanding.

Implementation of Recommendations

2.29 In all our reports, whether on complaint investigation or DI, our recommendations to the organisation concerned aim to make for more open and client-oriented service, transparent and accountable administration, more efficient processes and effective practices. These may even include comments on policies found outdated or inequitable, although policies *per se* are, strictly speaking, not matters for our investigation.

2.30 Heads of organisations have a duty to report at regular intervals their progress of implementation of our recommendations. We will monitor and keep track by correspondence.

2.31 Unlike Court verdicts, The Ombudsman's recommendations are not binding. Nevertheless, where an organisation does not adequately act upon his recommendations, The Ombudsman may submit a report to the Chief Executive of the Hong Kong Special Administrative Region. Where a serious irregularity or injustice is found, The Ombudsman may make a further report to the Chief Executive. In such event, the Ordinance requires that a copy of the report be laid before the Legislative Council within one month or such longer period as the Chief Executive may determine.

Secrecy Requirement and Publication of Reports

2.32 The Ombudsman, staff and Advisers are all bound by law, under penalty of a fine and imprisonment, to maintain secrecy on all matters that come to our knowledge in the exercise and execution of our functions. This is to ensure that any person or organisation providing information to our Office can do so without reserve or fear of reprisal from the disclosure of their identity or related data.

2.33 In this connection, it is our general practice not to respond to any question from third parties on individual complaints. However, where it is in the public interest to do so, The Ombudsman may publish at media conferences anonymised reports on complaint investigation, or otherwise answer media enquiries on such investigations, again hiding names and other personal data.



Fig. 2.7 The Ombudsman responding to enquiries at press conference

2.34 We usually announce DI findings at media conferences. DI reports also form part of the library stock in our Resource Centre and are placed on our webpage for public reference (see **Chapter 6**).

Essence of Our Investigation

2.35 Our object in investigation is to establish the facts of a case and, where appropriate, enhance the quality of public administration. We do not conduct witch-hunt or criticise regardless. We inquire without fear or favour, bias or prejudice. We aim for fair and impartial conclusion of a case.



Chapter 3

Performance and Results

Enquiries and Complaints Processing

3.1 This year we received 5,339 complaints, or an average of about 445 cases per month. This was 11% higher than last year's corresponding figures of 4,803 and 400. If topical complaints (see **para. 3.4**) are excluded, the annual figure this year was 4,712, an increase of 6.85% from last year's 4,410.

Fig. 3.1

Enquiries and Complaints Received

Year	Enquiries	Complaints	
		Total	Excluding topical complaints*
2006/07	15,626	5,606	N.A.
2007/08	12,169	4,987	N.A.
2008/09	14,005	5,386	4,533
2009/10	13,789	4,803	4,410
2010/11	12,227	5,339	4,712

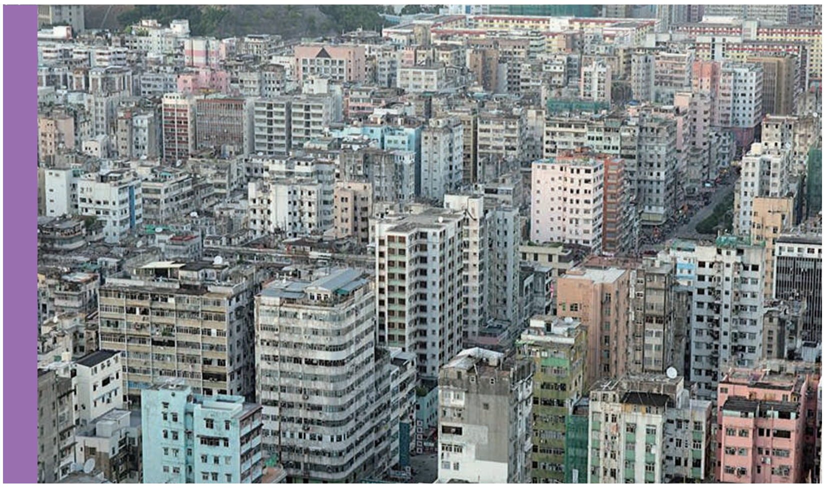
* Statistics on topical complaints started to be kept only from 2008/09 onwards.

3.2 We also had 1,128 cases brought forward from last year, including 34 "re-opened" cases[1]. These, together with the complaints received during the year, generated a total of 6,467 complaints for processing this year.

3.3 We received fewer enquiries this year, numbering 12,227, compared with 13,789 last year. **Table 1** gives more detailed figures of enquiries and complaints received and processed in the past five years.

[1] This category captures those cases which had been closed in previous years for being unpursuable (for example, the complainant was untraceable) but which subsequently became pursuable (the complainant contacted us again) and thus were re-opened for inquiry in the current year.

Topical Complaints



3.4 There continued to be a significant number (627) of topical complaints (see **para. 2.6** of Chapter 2) this year, comprising about 11.7% of all complaints received. The majority concerned the unauthorised development works in Tai Long Sai Wan in the New Territories (with about 447 complaints). The remaining ones were largely related to the illegal occupation of Government land by a temple and construction of a columbarium therein (79 complaints), the minibond saga (43 complaints), the Building Maintenance Grant Scheme for Elderly Owners (27 complaints) and a dog catching incident allegedly involving cruelty to the dog (19 complaints).

Mode of Lodging Complaints

3.5 Most complainants lodged their complaints in writing, with 77.7% using this mode. Email continued to be the most popular channel, as shown in **Fig. 3.2**.

3.6 Notwithstanding this, an increasing number of people came to our office to lodge their complaints. This years, 634 (11.9%) of the complaints were lodged in person, compared with 413 (8.6%) last year and 370 (6.9%) the year before.

Complaints Handled

3.7 As noted in **paras. 3.1** and **3.2**, we received more complaints this year, and hence had more complaints for processing. At the same time we continued the approach adopted last year of placing greater emphasis on securing direct from the complainee organisation information specific to the complaint rather than relying on material on our files or in the public domain. As a result, among the 5,437 cases processed, we had significantly more complaints pursued this year, with 3,056 cases (56.2%) pursued and concluded, compared with 2,215 last year, an almost 38% increase.

Fig. 3.2

Mode of Lodging Complaints

Mode	2006/07	2007/08	2008/09	2009/10	2010/11
In person	412	251	370	413	634
In writing -					
by complaint form	586	486	1,300	863	544
by letter through post	1,002	1,829	936	870	882
by fax	836	753	890	764	766
by email	2,461	1,380	1,515	1,362	1,954
By telephone	309	288	375	531	559
Total	**5,606**	**4,987**	**5,386**	**4,803**	**5,339**



3.8 The non-pursuable cases included those that we could not investigate due to restrictions by law or jurisdictional limitations (see **Chapter 1**) and those that were withdrawn by the complainant or discontinued by us after initial inquiry. There were also cases not undertaken because further inquiry was considered unnecessary, mainly for the following reasons:

- a *prima facie* case of maladministraton is not established;
- the complainant is merely expressing opinions or seeking assistance;
- the complainant has refused to consent to disclosure of personal data, necessary for our inquiries;
- the organisation concerned is already taking action on the matter; or
- there is another authority for the matter.

Fig. 3.3

Complaints Processed in 2010/11

	Cases Processed	Percentage
Cases Not Pursuable	2,381	43.8%
Cases Pursued and Concluded	3,056	56.2%
Total	**5,437**	**100.0%**

Major Causes for Complaint

3.9 Most complainants expressed their dissatisfaction over the decisions or advice by organisations which they perceived as wrong. Based on the allegations made in the complaints processed this year, the top five causes for complaints most mentioned were:

- error, wrong decision or advice (33%);
- delay (11%);
- negligence, omission (7.9%);
- ineffective control (7.9%); and
- lack of response to complaint (7.2%).

More details are given in **Table 3**.

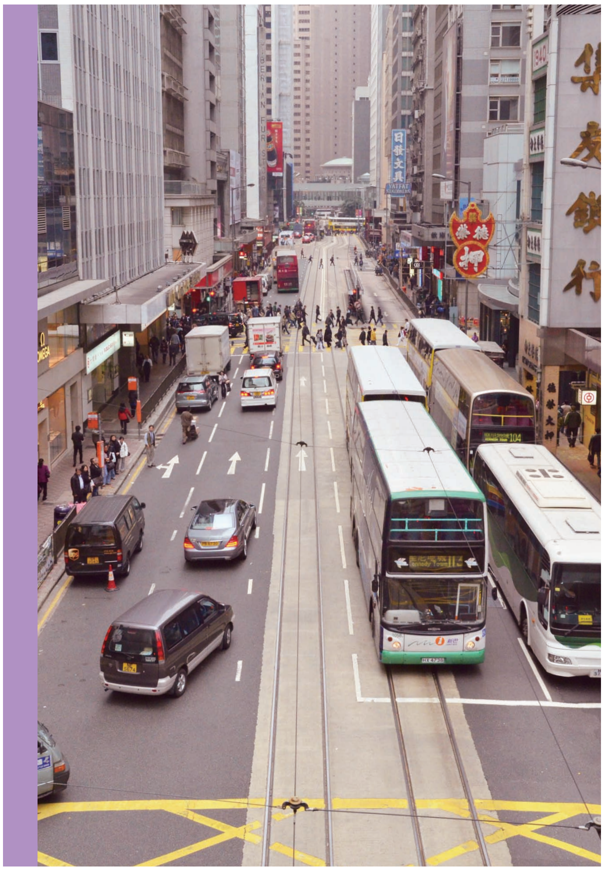
3.10 Based on cases concluded after full investigation, the top five forms of maladministration substantiated or partially substantiated were:

- failure to follow procedures (18.1%);
- faulty procedures (15.3%);
- delay (13.9%);
- error, wrong decision or advice (11.1%); and
- negligence, omission (9.7%).

More details are given in **Table 9.**

Most Popular Targets of Complaint

3.11 Each year we report on the organisations most frequently complained about based on the number of complaints we received on them during the year, excluding those that are not pursuable. We used to show a "top ten" league for this. This year we saw two organisations ranking at the tenth position. Accordingly, a league of the "top eleven" is shown (see **Table 6**).



3.12 The Lands Department ranked top mainly because of the topical complaints relating to the unauthorised development works in Tai Long Sai Wan (see **para. 3.4**). For the same reason the Environmental Protection Department and the Planning Department came in at the fifth and sixth positions, somehow replacing the Hong Kong Monetary Authority and the Securities and Futures Commission, which appeared in last year's league mainly because of the minibond saga. The Food and Environmental Hygiene Department and the Buildings Department, the two departments constituting the Joint Office for seepage complaints, remained high at the second and fourth positions of the list, with the Housing Department in between, as in last year.

3.13 The Social Welfare Department ranked slightly higher this year, while the Home Affairs Department, having dropped out last year, came in again and ranked tenth together with the Leisure and Cultural Services Department.

Outcome of Investigations and Inquiries

3.14 We concluded 155 complaints by full investigation, with 48 (31%) substantiated, partially substantiated or substantiated other than alleged. The outcome of our full investigations is summarised in **Fig. 3.4**.

Fig. 3.4

Outcome of Complaints Concluded by Full Investigation

Classification	All Complaints	
	No. of Cases	Percentage
Substantiated	26	16.8%
Partially substantiated	19	12.3%
Substantiated other than alleged	3	1.9%
Unsubstantiated	106 (76)	68.4%
Inconclusive	1	0.6%
Total	**155 (76)**	**100.0%**

(Note : Figures in brackets are topical complaints)

3.15 This year we recorded the outcome of all inquiry cases by whether maladministration is found. With such data we are able to gauge more specific information on the outcome of our inquiries. **Fig. 3.5** shows that no fault was found in over half of the inquiry cases, while nearly 29% had maladministration found. More details are given in **Table 7**.

Fig. 3.5

Outcome of Complaints Concluded by Inquiry

Outcome	No. of Complaints	Percentage
Maladministration found	835	28.9%
No evidence of maladministration	1,576	54.4%
Inconclusive	483	16.7%
Total	**2,894**	**100.0%**

Direct Investigation

3.16 We completed six direct investigations this year, covering subjects concerning fire safety, road safety, non-emergency ambulance service for patients, unauthorised building works and allocation of Government land. Announcement of our findings of these direct investigations through press conferences attracted wide media coverage and public interest. Three direct investigations were in progress at the end of the year.



3.17 We also completed ten direct investigation assessments (or "mini-direct investigations") this year and looked into issues in a range of fields such as unlicensed ferry service, education funds, building safety, proper custody of patients in public hospitals, management of public housing estates and guesthouses and bedspace apartments.

3.18 The full list of the direct investigations and direct investigation assessments completed is in **Annex 5**.

Recommendations

3.19 We made 142 recommendations on completion of 155 full investigation, among which 76 were unsubstantiated topical complaints concluded without a recommendation. We also made 40 recommendations after six direct investigations. Among this total of 182 recommendations, so far 161 (88.5%) of them have been accepted by the organisations for implementation, while the remaining 21 (11.5%) are still under consideration.

3.20 For inquiry cases, we also make suggestions for improvement where appropriate. This year, we made 194 such suggestions. A breakdown of the suggestions by organisations is in **Table 7**. Since this was the first year when we grouped INCH and RAC cases into a single category of inquiry cases (see **para. 2.15** of Chapter 2), the number of suggestions made this year also included those made in INCH cases. For this reason, no comparison on this number is made between this year's figure and last year's.



Our Performance

3.21 Our performance pledges and record of achievement are detailed in **Annex 14**. We continued to meet our pledges fully in respect of answering enquiries by telephone and in person and in arranging talks. For enquiries in writing, we answered 77.7% of them in five working days and 21.9% in six to ten working days. In one case (0.4%) we were unable to answer in ten working days.

3.22 On complaint handling, we acknowledged and completed initial assessment of almost all complaints received within five working days and none beyond the pledged time frame of ten working days (see **Fig. 3.6(a)**). For processing cases outside jurisdiction or under restriction, we exceeded the target timeframe of 15 working days in 2.1% of the cases, compared with 4.8% last year (see **Fig. 3.6(b)**).

3.23 For cases screened in for further processing, we concluded 74.5% of the cases within three months, an improvement from the below pledge performance of 54.7% last year. There were only 0.9% of the cases, as compared to 2.1% last year, not concluded within six months, our pledge timeframe for completing all cases (see **Fig. 3.6(c)**).

Fig. 3.6

(a) Response Time for Acknowledgement or Initial Assessment

Year	Response Time		
	Within 5 working days (target : not less than 80%)	Within 6-10 working days (target : not more than 20%)	More than 10 working days
2006/07	99.9%	0.05%	0.05%
2007/08	99.9%	0.06%	0.03%
2008/09	99.8%	0.18%	0.02%
2009/10	99.9%	0.10%	0.00%
2010/11	99.8%	0.20%	0.00%

(b) Processing Time for Cases Outside Jurisdiction or Under Restriction			
Year	Response Time		
	Within 10 working days (target : not less than 70%)	Within 11-15 working days (target : not more than 30%)	More than 15 working days
2006/07	90.9%	8.7%	0.4%
2007/08	88.1%	10.3%	1.6%
2008/09	77.2%	19.6%	3.2%
2009/10	78.9%	16.3%	4.8%
2010/11	83.4%	14.5%	2.1%

(c) Processing Time for Other Cases Concluded			
Year	Response Time		
	Less than 3 months (target : not less than 60%)	Within 3-6 months (target : not more than 40%)	More than 6 months
2006/07	57.1%	40.3%	2.6%
2007/08	56.5%	41.5%	2.0%
2008/09	65.9 %	32.3%	1.8%
2009/10	54.7%	43.2%	2.1%
2010/11	74.5%	24.6%	0.9%

3.24 While we always strive to speed up our processing of complaints, there are factors not within our control that will affect the process, such as complexity of the case and new developments mid-stream. At times, complainee organisations may require more time for response to our inquiries. We do not accede to such requests routinely but will ask for specific reasons to justify extension of the response time.

Overview

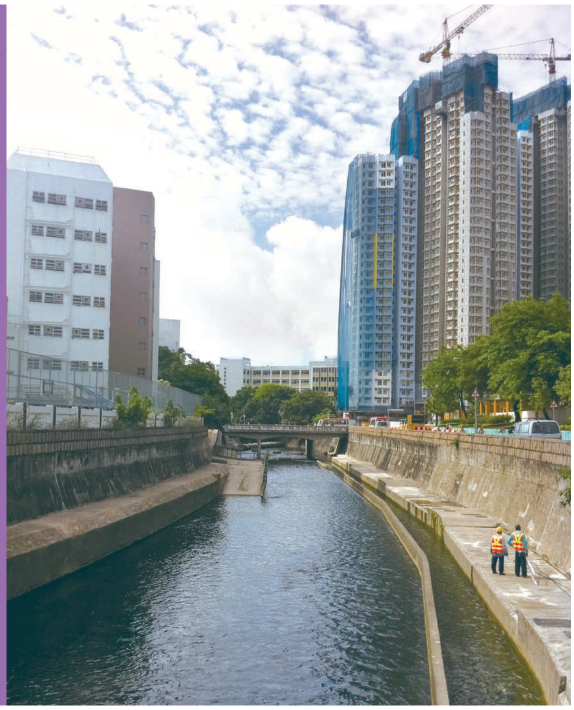
3.25 The past year was a challenging one in terms of complaint handling because of the increased number of complaints received. Notwithstanding this, we maintained the practice started last year of placing greater emphasis on obtaining specific information or response from the complainee organisation to the complaint rather than concluding a case summarily relying on existing material in hand or in the public domain. Despite the increased caseload thus resulting, with great commitment by our staff and good cooperation from organisations, we were able to complete a greater percentage of cases and achieve better performance against our pledges.

Chapter 4

Reward and Challenge

Enhancing Quality Administration

4.1 As stated in our mission statement, an important objective of our investigative work is to bring about improvement in the quality of service and standard of public administration. We achieve this by making recommendations and suggestions on conclusion of our inquiries and investigations. We are pleased that most of the recommendations and suggestions we made have been accepted by the organisations concerned (see **para. 3.19** of Chapter 3).



4.2 We follow up our recommendations and suggestions until they have been implemented by organisations, resulting in visible improvement to their operations and services. The measures introduced by organisations in this respect fall broadly into the following:

(a) guidelines for clarity, consistency or efficiency in operation;

(b) better arrangements for inter-departmental coordination;

(c) measures for better public enquiry or complaint handling;

(d) measures for better services;

(e) more reasonable rules and charges;

(f) clearer and more information to the public; and

(g) training for staff.

Some examples of improvements made this year are given in **Annex 11**.

4.3 Every year when our Annual Report is tabled in the Legislative Council, the Administration submits a Government Minute to the Council summarising and updating on the actions taken by the organisations concerned in implementing our recommendations.

Resolving Complaints by Mediation

4.4 The Ombudsman Ordinance empowers me to settle a complaint by mediation if the subject matter of the complaint involves no, or only minor, maladministration (see **para. 2.21** of Chapter 2). I believe there is scope for more active adoption of this approach of alternative dispute resolution to complaints handling.

4.5 During the year we reviewed and updated our internal procedures for mediation, encouraged staff to identify suitable cases and succeeded in concluding seven cases by mediation. Although this is still a small number it was a significant rise from the past four years, which had three mediated cases at most in a year. Feedback from parties to the complaints showed that mediation was welcome by both complainants and organisations because the outcome was satisfactory to all.



Code on Access to Information

4.6 The Ombudsman Ordinance imposes a duty on me to look into breaches of the Government Code on Access to Information (see **footnote 1** of Chapter 1) under which departments are required, upon request, to provide to the public information they hold, unless there are valid reasons specified in the Code for not doing so. The Code applies to all Government departments, including those not included in Part I of Schedule 1 to The Ombudsman Ordinance (such as the Hong Kong Police Force and the Independent Commission Against Corruption) over which I have no jurisdiction in respect of matters concerning maladministration generally.

4.7 This year we received 39 complaints relating to the Code. This number, though not as high as last year, is significantly higher than the previous few years, as shown in **Fig. 4.1** below:

Fig. 4.1

Number of Code-related Complaints in the Past Five Years

Year	No. of Complaints Received
2006/07	7
2007/08	17
2008/09	24
2009/10	46*
2010/11	39

* The figure includes 3 cases not recognised as such complaints in the year when they were received but so classified on conclusion in the subsequent year.

4.8 The Code is an important means to ensure open and accountable government and to protect the citizen's civil and political rights. I attach great importance to complaints of breaches in this area. Where appropriate, I make recommendations for improvement to assist departments in adhering more closely to the spirit of the Code in handling requests for information from the public. Two examples of such improvements are illustrated in **Annex 11**, with one department having revised its internal guidelineson this matter (Case No. 2007/4073, Section (a) of **Annex 11**) and another devised an arrangement to disseminate information of significant public interest systematically (Case No. 2009/4180(I), Section (f) of **Annex 11**).

Addressing Systemic Issues

4.9 Many complaints have a common cause or share a similar pattern, indicating the presence of some more deep-rooted, systemic deficiencies. We believe that the removal of such systemic deficiencies will go a long way to improving public administration and avoid many future complaints. Therefore, in processing a complaint, we always pay attention to the indication of any systemic issues within the organisations concerned. If necessary, we will conduct a direct investigation for more in-depth scrutiny. We will alert the heads of the organisations or their policy bureaux and, where justified, the Central Administration, to any such issues identified.



Inter-departmental Coordination

4.10 The lack of inter-departmental coordination and the related problem of compartmental mentality continued to be the cause of many complaints, especially where land allocation or demarcation is involved. In one case we handled in the year, the complaint itself was a minor issue concerning the flooding of a sunken section of a small path leading to a public recreation facility. The complainant sought help from the 1823 Call Centre but the latter was unable to identify the responsible department, because all the departments contacted by the Call Centre were quick to argue that they should not be responsible, while the Lands Department was slow in locating the crucial information for identifying the responsible department. Seeing the problem remaining unresolved for over a year, one department did admirably offer to do the repair, though the generous offer proved unnecessary following the eventual identification of the responsible department. Had all the departments involved adopted such an attitude from the start, the matter would have been resolved speedily and there would have been one less incident tarnishing Government's image.

4.11 In another case, a lot of land allocated to the former Education Department in the 1970's at the latter's request for use by a sports association primarily for the benefit of schools was found underutilised. The Education Bureau tried hard to shirk responsibility by arguing that the land was allocated to the association direct. It was only after the original land allocation document had been found that the Bureau was willing to accept responsibility. The compartmental mentality of the Education Bureau had resulted in underutilisation of the land in question for a protracted period of time.

4.12 Last year I reported on the problem of unclear delineation of responsibility between the Lands Department and the Buildings Department for enforcement against unauthorised building works in the New Territories and my initiation of a direction investigation on the subject. The investigation was completed this year and revealed deficiencies in the "works in progress" policy exacerbated by the overly restrictive definition of responsibilities over the issue by the two departments.

4.13 Street management and seepage remained two perennial problems exacerbated by the lack of concerted effort between the departments concerned. I have drawn the attention of the Central Administration to this matter and urged for effective measures to improve the situation, as our Office has continued to receive a large number of complaints over these two issues.



Accountability

4.14 In the report last year I commented on the accountability of management over action taken by frontline staff in terms of supervision and monitoring. Another important aspect of accountability concerns the performance of contractors and consultants engaged by departments.

4.15 An example in this respect has been the inadequate supervision by the Buildings Department of the consultants it appoints to investigate seepage complaints. In many cases we saw ineffective action by the department to ensure timely correction of unsatisfactory performance by the consultants. Often the department did no more than changing the consultant but there was no measure to see to it that the new consultant would do a better job. We consider that the department should discharge its supervisory responsibility over the consultants more actively.



4.16 The Water Supplies Department contracts out their work to install water meters in new building developments and in its water meter replacement programme. In a number of cases we handled, we found inadequate checking by the department of the work of the contractors it engaged, resulting in mismatching of meters not being noticed until complaints about unreasonable water charges have been received. The Housing Department has most of its estate management services outsourced. We have seen cases where complaints lodged with the department about poor service of the outsourced management company were simply referred back to the company for handling without follow-up supervision by the department to ensure that the matter under complaint would be effectively resolved.

4.17 It cannot be over-emphasised that the responsibility for service provision still lies squarely with the department though the service itself may have been contracted out. Due accountability calls for more positive action by the department contracting out the service and assurance of a reasonable service standard being maintained.

Challenges from Parties

Re-assessment of Cases

4.18 As mentioned in **Chapter 2**, all incoming complaints are examined by our Assessment Team to determine whether they come within the statutory purview of The Ombudsman and whether they have a *prima facie* case to warrant investigation. For cases screened out, complainants disagreeing with the decision may request re-assessment of their cases.

4.19 During the year we received 290 requests for re-assessment, with 89 subsequently re-opened for inquiry.

Review of Cases

4.20 For cases that we have concluded after examination of the issues under complaint, complainants dissatisfied with our findings or conclusions may seek a review. Such requests will be considered according to laid down procedures (see **para. 2.20** of Chapter 2). If it is considered justified, a review will be conducted. Where in-depth probing is considered warranted, the review will be conducted by full investigation.



Fig. 4.2 Staff conducting review of cases

Fig. 4.3

All Review Cases

Reason / Result	New evidence		New perspective		Outside jurisdiction	Total
	Yes	No	Yes	No		
Decision varied	3		5			8
Decision upheld		58			1	59
						67

4.21 This year we received 93 requests for review. We declined 26 of the requests and conducted 67 reviews. I varied my decision in eight cases after review and upheld my original decision for the remaining 59, as shown in **Fig. 4.3** above.

4.22 Five of the cases reviewed were by way of full investigation, with my decision varied in two cases. Details of these cases are given in **Annex 12**.

Review of Interpretation of "Aggrieved Person"

4.23 In connection with a complaint screened out in our assessment process on the ground that the complainant was not directly and personally aggrieved by the alleged maladministration, we considered it necessary to review our interpretation of the term "aggrieved person" mentioned in section 10(1)(d) of The Ombudsman Ordinance. Having consulted one of our Advisers in the legal field, we intend to adopt a more liberal interpretation so that in future, we will consider the complainant to be an aggrieved person if he can establish a reasonably arguable case that he has sustained injustice in consequence of maladministration in connection with an administrative action.

4.24 We will try out this new interpretation in the coming year and review its use in the light of experience gained.

Persistent Complainants

4.25 As noted in the foregoing paragraphs, there are proper channels for complainants who are dissatisfied with our decision on their cases or the outcome of our inquiries to request re-assessment or review of their cases. However, some of them chose more confrontational means to express their dissatisfaction. In some cases they made frequent and numerous telephone calls to different staff of our Office, sometimes using abusive languages. In an extreme case the complainant came to our office, disrupted our operation and threatened the use of violence on occasions.

4.26 We always handle these situations with patience and professionalism, explaining to the complainants the proper channels for appeal, including seeking of judicial review by the court if they consider such to be warranted. Where they refuse to act reasonably, we will take resolute action to ensure that our service to other members of the public is not unduly affected.

Judicial Review

4.27 A complainant not satisfied with my decision may, apart from requesting a review by me, seek a judicial review by the court.



4.28 As with last year, there was no application for judicial review against my decisions this year. For the case mentioned in my report last year where the complainant had appealed against the court's decision of not granting leave for its application for judicial review, the appeal was heard in September 2010 and dismissed by the court, with an order for the appellant to pay costs. The appellant is appealing against this order.

Jurisdictional Matters

4.29 As reported in my last year's report, the Administration had decided to include the following four organisations in Part I of Schedule 1 to The Ombudsman Ordinance:

Auxiliary Medical Service;
Civil Aid Service;
Consumer Council; and
Estate Agents Authority.

The addition took effect on 2 July 2010.

4.30 Apart from the jurisdictional review conducted by this Office which has resulted in the addition of new organisations to The Ombudsman's jurisdiction, we also examine proposals to set up new public organisations as such proposals come to our knowledge. In response to the Administration's public consultation on a proposal to establish an Investor Education Council and a Financial Dispute Resolution Centre, we provided written comments to the Administration in March 2010. We have been monitoring the Administration's response to our comments.

4.31 During the year it came to our notice that the Administration had proposed to the Legislative Council to establish a new Communications Authority to replace the Broadcasting Authority and the Telecommunications Authority. We wrote to the Administration in January 2011, expressing our views on the matter.

4.32 We also expressed our views on jurisdiction to the Legislative Council in December 2010 to facilitate its review of the operation of the Independent Police Complaints Council.

Overview

4.33 It is rewarding to see that through our independent inquiries and investigations we are able to bring about improvement to public administration, in terms of better service, more efficient administration, more reasonable rules and more open and responsible governance. We will continue to draw to the Administration's attention underlying and systemic deficiencies until they are properly dealt with.

4.34 We will endeavour to maintain the highest standard of our investigative work and attach great importance to any disagreement or dissatisfaction expressed towards our case handling. We regularly and critically review our findings and procedures with a view to enhancing the quality of our work and through which our ability to safeguard citizens' rights.



Chapter 5

Office Administration

Staffing

5.1 We had reinforced our staff complement in the past several years to cope with a continued increase in caseload. With the addition of two investigation teams, we expect that the present establishment should be able to handle an average number of about 5,000 complaints a year. For seasonal fluctuations of caseload, we would recruit temporary investigators who had rich experience in public administration to supplement our regular workforce.

5.2 At the senior management level, a new Deputy Ombudsman, Mr So Kam-shing, joined the Office in April 2010 to take over from Mrs Helen Yu, who retired after almost nine years' service in the post. We are grateful to Mrs Yu for her dedication and commitment in the promotion of the ombudsman system as well as bringing about a fair and efficient public administration during these years.

Training

5.3 As in previous years, we continued to attach utmost importance to staff training so as to equip my staff with the skills required for efficient and effective discharge of their duties.

5.4 In the year, we organised two induction programmes for our new recruits to enable them to become fully operational as quickly as practicable. As part of our normal training, we also sharpened the language skills of our investigators by organising training and experience sharing sessions to strengthen their knowledge on the general usage of both Chinese and English.



Fig. 5.1 Training on telephone skills

Fig. 5.2 Organisation structure

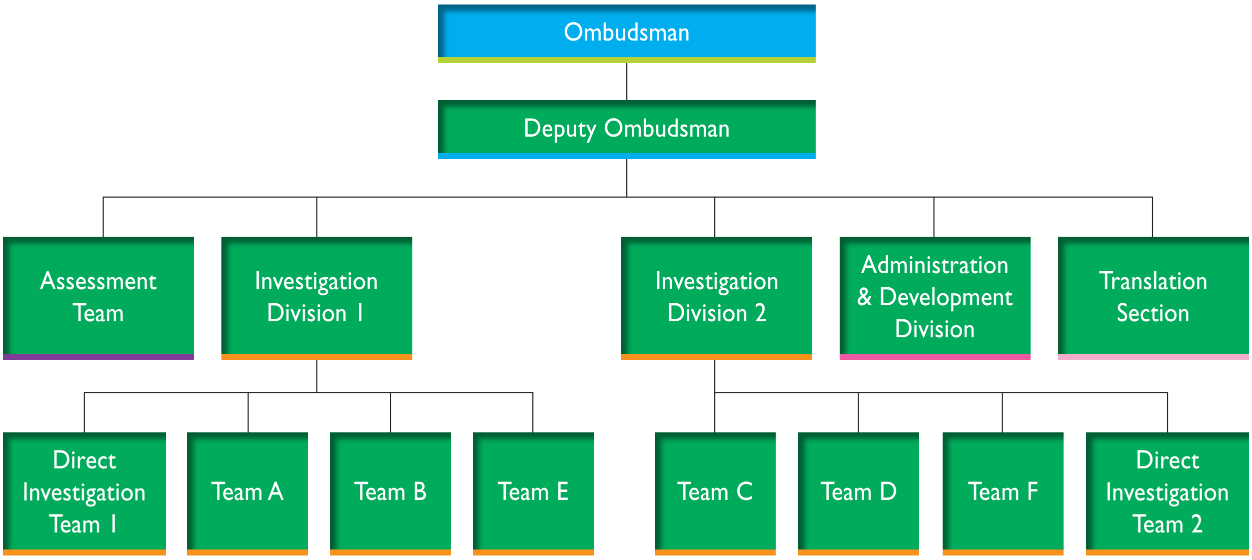


Fig. 5.3

Staff complement			
Breakdown of staff	**As at 31.3.2009**	**As at 31.3.2010**	**As at 31.3.2011**
Directorate	4	4	4
Investigation	56	51	54
Administrative & support	47	47	48
Total regular staff	**107**	**102**	**106**
Temporary investigation staff: equivalence to full-time posts (total staff-days)	4.8 (1,268)	4.3 (1,146)	5.1 (1,351)
Temporary support staff	4	12	–
Grand total	**115.8**	**118.3**	**111.1**

5.7 To broaden our outlook, I am always prepared to provide opportunities for my staff to expose themselves to practices and systems concerning public administration and complaint investigation elsewhere.

5.8 Two of my senior investigators joined a one-week course in Shanghai organised for the disciplined services of Hong Kong to study the administrative system and other developments in the Mainland.

5.5 To improve frontline communication skills, we had commissioned two experts in customer service for running two training sessions for our colleagues, with one focusing on telephone skills and the other on interviewing techniques.

5.6 We support the use of mediation as an effective means of conflict resolution in suitable cases (see **para 2.21** of Chapter 2). To build up our capacity in this respect, we had organised a mediation training course in May 2010 for our investigators. The course not only provided them with knowledge on mediation theories but also hands-on experience in mediation through role play.



Fig. 5.4 Training on interviewing techniques



Fig. 5.5 Mediation training

5.9 Locally, another two of my senior investigators were attached to the Complaints Division of the Legislative Council Secretariat for a half-day session to see how petitions by group complainants were received by Legislative Councillors. It was part of our ongoing efforts to exchange experience in complaint handling with other offices.

Document Management Project

5.10 The project to transform complaint and investigation records to a more systematic, durable, and easily retrievable format has proceeded smoothly and most past records have been digitised. We have therefore gradually downsized the project team comprising mainly temporary support staff to deal with residual as well as new records.

Complaints against the Office

5.11 In 2010/11, we concluded a total of 18 complaints lodged against staff manner, the Office's work practices and procedures or both. Of these complaints, five were found substantiated/partially substantiated. This reflected the need to improve our service in some areas, in particular, the tact and skills in communication. On each occasion, we counselled the staff concerned on their deficiencies for improvement.



Fig. 5.6 Shanghai training tour

5.12 Complaints against our staff would often arise from dissatisfaction with our conclusions and decisions on complaints against Government departments and public organisations. In these circumstances, the target for complaint is misdirected: for decisions on cases are made by me, not the staff issuing the reply or report on my behalf. Where appropriate, we treat these cases as requests for review. Where there is fresh evidence for revising the outcome on the complaint cases, we will do so. Our ultimate aim is to endeavour to maintain fairness and objectivity in our investigation.

5.13 Nevertheless, we take complaints most seriously as each complaint provides us with an opportunity to review our work systems and practices. We treasure the lessons learned and are always ready to improve our services to the community.

Fig. 5.7

Complaints against the Office concluded in 2010/11

Nature	Substantiated	Partially substantiated	Unsubstantiated	Inconclusive
Staff manner (including delay & negligence)	–	–	9	1
Work practices & procedures	1	3	3	–
Both staff manner & work practices & procedures	–	1	–	–
Total	**18**			



Chapter 6

Publicity and External Relations

6.1 We recognise the importance of engaging different sectors of the community so that our work would be in tune with community aspirations. During the year, apart from various publicity activities and publications, we also actively engage our stakeholders to promote our work and solicit their feedback.

Reaching out to the Community

Publicity Campaign

6.2 We launched a publicity campaign in October 2010. Five new short publicity videos on The Ombudsman's functions and jurisdiction were broadcast on TV, buses and trains. At the same time, print advertisements were placed in two popular local newspapers. The campaign aimed to reach all walks of the community.



Fig. 6.1 Print advertisements

Outreach Talks

6.3 We also reach out to different sectors of the community by delivering talks to Government departments, schools, universities and elderly centres. This year, we conducted over 20 outreach talks and the response was encouraging.



Fig. 6.2 Talk for Government department

Resource Centre

6.4 Our Resource Centre houses a collection of publications about this Office and related organisations around the world. These include our newsletters, *OmbudsNews*, Annual Reports, direct investigation reports, video recordings as well as periodicals from overseas ombudsman institutions. Members of the public are welcome to visit our Centre for such information.

Publications and Website

6.5 We update our publications and website regularly. With the inclusion of four more public bodies to The Ombudsman's schedule (i.e. the Auxiliary Medical Service, the Civil Aid Service, the Consumer Council and the Estate Agents Authority) in July 2010, we revised the design of our publicity leaflets and updated their content. The complaint form was also reviewed and amended to reflect our latest mode of operation. These publications were available at our Resource Centre, our website and District Offices of the Home Affairs Department.



Fig. 6.3 Publications

6.6 Our website (www.ombudsman.gov.hk) serves as an important and convenient platform for the public to access the latest information about our Office. Publications, investigation reports, press releases, useful forms as well as our latest publicity videos are available online.

Youth Education

6.7 We attach great importance to youth education as we believe positive social values, such as fairness and equity, should be inculcated from an early age. We realise that online platform is a major and effective channel for disseminating messages to the next generation. In October 2010, we worked with a non-government organisation to produce a video on the work of The Ombudsman. The video was put on "*Welovehk Channel*", an educational video sharing platform tailored for local students. We would look for more opportunities to promote our work through cooperation with online partners.



Fig. 6.4 Welovehk Channel

Press Conferences and Media Releases

6.8 I rely heavily on the support of the mass media in disseminating vital information and messages of my Office to the public. During the reporting year, we held three press conferences, during which we announced the results of two anonymised complaint investigation reports and five direct investigation reports. We also declared the launch of two direct investigations. Our efforts had been extensively reported by the local newspapers, TV, radio and online media.



Fig. 6.5 The Ombudsman in press conference

Fig. 6.6

Press Conferences or Public Announcements	
13 May 2010	• Announcement of findings of anonymised investigation into complaint against Transport Department for shirking responsibility and failing to handle properly the problem of illegal parking of bicycles at a public transport interchange • Announcement of findings of direct investigation on fire safety regulatory measures
9 September 2010	• Declaration of direct investigation into special education services for students with emotional and behavioural difficulties • Announcement of findings of direct investigation on: i. Driving-offence points system ii. Allocation and monitoring of Government land
10 November 2010	• Declaration of direct investigation into management of water meters and consumer accounts
21 December 2010	• Announcement of findings of anonymised investigation into complaints against Water Supplies Department about water meter mix-up • Announcement of findings of direct investigation on: i. Management of non-emergency ambulance transfer service by Hospital Authority ii. Transport Department actions for safe operation of public light buses



Fig. 6.7 Media interview

Working with Professionals, Community Leaders, etc.

Advisers and JPs

6.9 To enhance the effectiveness and impact of our work, we seek assistance from our Advisers and enlist the support of Justices of the Peace (JP) under our JPs Assistance Scheme where necessary.

6.10 In December 2010, we organised a seminar on water seepage, a widespread problem affecting many households in Hong Kong. We invited our Advisers and JPs, Government representatives as well as specialists in this area to speak and share with us their views on how the problem should be tackled. There were constructive interactions and fruitful exchanges of views in the seminar which was well attended by over 60 participants.



Fig. 6.8 Seminar on water seepage

Legislative Councillors and District Councillors

6.11 Every year, I meet with Members of the Legislative Council to update them on our work. This year's meeting took place on 14 December 2010, during which I briefed Members on the work of my Office and discussed issues of mutual concern, which included The Ombudsman's jurisdiction on personnel matters and definition of "aggrieved" person.

6.12 At the district level, it is our intention to strengthen our relationship with District Councils ("DCs") for the betterment of community services. In January 2011, with the assistance of the Home Affairs Department, I met with the Chairmen and Vice-chairmen of the DCs. I updated them on our latest work and received valuable feedback.

6.13 To further enhance our collaboration with Legislative Councillors and District Councillors, we organised a seminar for their assistants on 3 March 2011. The seminar aimed to equip participants with a better understanding of our role and operations, so that we can supplement each other in addressing issues of public concern. Over 90 participants took part and we had fruitful exchanges on important community issues including building management, public housing, water seepage, transport facilities and public medical services.



Fig. 6.9 Seminar for councillors' assistants

The Ombudsman's Awards

6.14 Every year, we acknowledge the efforts of public organisations and their officers exemplary in handling complaints and enhancing the quality of public administration. This year, the Grand Award went to the Immigration Department, with the Mandatory Provident Fund Schemes Authority and the Student Financial Assistance Agency as runners-up. Their representatives and 21 individual awardees were honoured in the Presentation Ceremony held on 16 November 2010. It is evident from the response that The Ombudsman's Awards have helped to promote better understanding of The Ombudsman system and develop a positive culture for grievance redress among public officers.

Fig. 6.10

Winning Organisations for 2010
Immigration Department (Grand Award)
Mandatory Provident Fund Schemes Authority
Student Financial Assistance Agency

Fig. 6.11

Individual Awards for 2010

Organisation	No. of Awardees
Auxiliary Medical Service	1
Civil Engineering and Development Department	2
Correctional Services Department	1
Customs and Excise Department	1
Drainage Services Department	2
Efficiency Unit	1
Highways Department	1
Hospital Authority	1
Immigration Department	2
Inland Revenue Department	1
Land Registry	1
Legal Aid Department	1
Mandatory Provident Fund Schemes Authority	2
Social Welfare Department	1
Transport Department	2
Urban Renewal Authority	1



Fig. 6.12 The Ombudsman's Awards ceremony

Liaising with Overseas and Mainland Counterparts

International Liaison

6.15 I treasure the ties with our overseas counterparts. Their modes of investigation and operation serve as good references for our own practices and procedures. I have taken an active role in exchanges at the international level. I attended the Asian Ombudsman Association's Conference and Board Meeting in Manila, the Philippines in August 2010. In October 2010, I was elected the Treasurer in the International Ombudsman Institute's Board Meeting in Bermuda. In March 2011, I joined the 26th Australasian and Pacific Ombudsman Region Conference in Taiwan. All these granted me valuable exposure to ombudsman systems of different social, political and cultural background.

6.16 Under the Regional Technical Assistance programme of the Asian Ombudsman Association, one of my Assistant Ombudsmen and a senior investigator attended a retreat session in Kuala Lumpur, Malaysia in July 2010. Ideas on complaint handling and investigation practices were shared amongst participants from kindred institutions around the region.

Mainland Liaison

6.17 Our Office has maintained an exchange programme with the China Supervision Institute since 1996. In October 2010, a six-member delegation from the Ministry of Supervision, China, visited Hong Kong for five days. During the period, we arranged briefings by various government departments and public bodies for the delegation. The programme enabled these delegates to achieve a better understanding of the administrative systems and socio-economic development of Hong Kong. We also took the opportunity to update each other on our investigation practices and procedures.



Fig. 6.13 China exchange programme

6.18 My Deputy led a team of six members to Hubei and Guangdong in November 2010 for five days. They visited the local administrative centres and studied their enquiry and complaint handling mechanism. Such experience is of immense value to my colleagues in broadening their horizon, giving them new perspectives and insight in addressing public grievances.



Fig. 6.14 Sharings on electronic surveillance system with our counterparts in Huizhou, Guangdong

Looking Forward

6.19 We regularly review and adjust our services to keep pace with public expectations. We conduct public opinion surveys from time to time for mapping out the right direction for our way forward. We will continue to gauge public knowledge, perception and expectation on our services. We believe that this will give us useful indicators to refine our practices for meeting the ever increasing service needs. Apart from the views of the public, we will continue to draw on the suggestions and experience of various stakeholders and counterparts around the world.





Annexes

Annex I

Glossary of Terms

Complaint

A complaint is a specific allegation of wrong doing, unreasonable action or defective decision which affects and aggrieves the complainant.

Complaint Not Undertaken

This is a complaint which The Ombudsman has decided not to process further after considering all its circumstances, e.g. whether there is sufficient *prima facie* evidence of maladministration.

Direct Investigation ("DI")

This is an investigation initiated in the public interest even in the absence of complaint and generally on matters of a systemic nature or wide community concern.

Direct Investigation Assessment

This refers to the preliminary examination and assessment on a potential subject for direct investigation. Where our direct investigation assessment finds no significant maladministration or the organisation concerned has made proactive improvement, we will not initiate a direct investigation. We will conclude our study and offer our findings to the organisation. Where appropriate, we make recommendations for improvement.

Discontinuation of Complaint

This is the cessation of inquiries into a complaint for reasons such as insufficient information or evidence from complainants and lack of complainants' consent for access to their personal data.

Enquiry

An enquiry is a request for information or advice.

Full Investigation

This refers to an in-depth inquiry, usually into complex or serious complaints and usually with recommendations for improvement or remedy upon conclusion.

Inconclusive

This is a situation where, at the end of a full investigation, The Ombudsman is not prepared to draw any conclusion on a complaint because the evidence is conflicting, irreconcilable, incomplete or uncorroborated.

Inquiry

For general complaint cases, we may use this procedure to resolve complaints more speedily. We ask the organisation under complaint to respond to us and, if we see fit, the complainant in parallel. We will examine such response, the complainant's view on it, if applicable, together with any other relevant information or evidence we have collected. We will, in conclusion, present our findings to the complainant and make suggestions to the organisation for remedy or improvement where necessary. Where deeper and fuller probing is needed before we can conclude the case, we will start a full investigation.

Investigation

This may be a full investigation into a complaint or a direct investigation without a complaint.

Maladministration

This is defined in The Ombudsman Ordinance. It basically means poor, inefficient or improper administration including unreasonable conduct; abuse of power or authority; unreasonable, unjust, oppressive or improperly discriminatory procedures and delay; discourtesy and lack of consideration for a person.

Mediation

This is a voluntary process carried out where the complainant and the organisation under complaint agree to meet to discuss the complaint and to explore mutually acceptable solutions. Investigators from this Office act as impartial facilitators.

Outside Jurisdiction

This refers to the situation where the action or organisation under complaint is not within The Ombudsman's jurisdiction under The Ombudsman Ordinance.

Restrictions on Investigation

These are the restrictions on investigation under The Ombudsman Ordinance.

Substantiated other than Alleged

This is where a complainant's allegations are unsubstantiated but The Ombudsman discovers other aspects of significant maladministration and comments on those other deficiencies.

Substantiated, Partially Substantiated and Unsubstantiated

These reflect the varying degrees of culpability of an organisation under complaint on conclusion of a full investigation.

Topical Complaints

These are complaints on a particular social or topical issue. They are essentially against the same action or decision by the organisation under complaint.

Withdrawal of Complaint

This is a complainant's voluntary withdrawal of a complaint. However, depending on the nature or gravity of the allegations, The Ombudsman may still pursue the case.

Annex 2

List of Scheduled Organisations

Organisations Listed in Part I of Schedule 1, Cap. 397

1. All Government departments/agencies except the Hong Kong Auxiliary Police Force, the Hong Kong Police Force, the Independent Commission Against Corruption and the Secretariat of the Public Service Commission
2. Airport Authority
3. Auxiliary Medical Service
4. Civil Aid Service
5. Consumer Council
6. Employees Retraining Board
7. Equal Opportunities Commission
8. Estate Agents Authority
9. Financial Reporting Council
10. Hong Kong Arts Development Council
11. Hong Kong Examinations and Assessment Authority
12. Hong Kong Housing Authority
13. Hong Kong Housing Society
14. Hong Kong Monetary Authority
15. Hong Kong Sports Institute Limited
16. Hospital Authority
17. Kowloon-Canton Railway Corporation
18. Legislative Council Secretariat
19. Mandatory Provident Fund Schemes Authority
20. Office of the Privacy Commissioner for Personal Data
21. Securities and Futures Commission
22. Urban Renewal Authority
23. Vocational Training Council
24. West Kowloon Cultural District Authority

Organisations Listed in Part II of Schedule 1, Cap. 397

1. Hong Kong Auxiliary Police Force
2. Hong Kong Police Force
3. Independent Commission Against Corruption
4. Secretariat of the Public Service Commission

Annex 3

Circumstances Where Complaints are not Followed Up or Investigated

Actions not Subject to Investigation - Schedule 2, Cap. 397

1. Security, defence or international relations
2. Legal proceedings or prosecution decisions
3. Exercise of powers to pardon criminals
4. Contractual or other commercial transactions
5. Personnel matters
6. Grant of honours, awards or privileges by Government
7. Actions by the Chief Executive personally
8. Imposition or variation of conditions of land grant
9. Actions in relation to Hong Kong Codes on Takeovers and Mergers and Share Repurchases
10. Crime prevention and investigation actions by Hong Kong Police Force or Independent Commission Against Corruption

Restrictions on Investigation of Complaints - section 10(1), Cap. 397

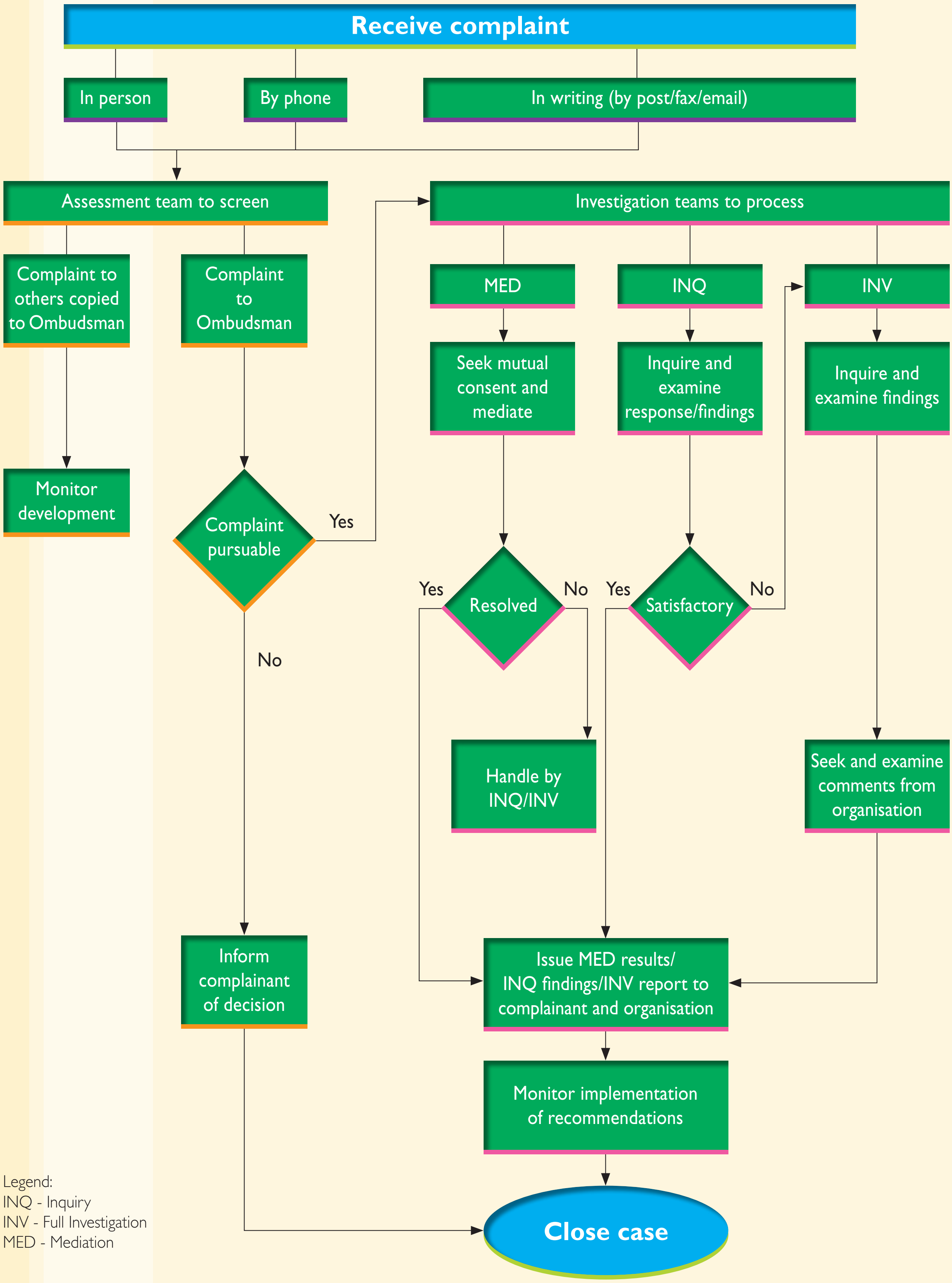
1. Complainant having knowledge of subject of complaint for more than two years
2. Complaint made anonymously
3. Complainant not identifiable or traceable
4. Complaint not made by person aggrieved or suitable representative
5. Subject of complaint and complainant having no connection with Hong Kong
6. Statutory right of appeal or remedy by way of legal proceedings (except judicial review) being available to complainant

Circumstances Where The Ombudsman may Decide not to Investigate - section 10(2), Cap. 397

1. Investigation of similar complaints before revealed no maladministration
2. Subject of complaint is trivial
3. Complaint is frivolous or vexatious or is not made in good faith
4. Investigation is, for any other reason, unnecessary

Annex 4

Flow Chart on Handling of a Complaint



Legend:
INQ - Inquiry
INV - Full Investigation
MED - Mediation

Annex 5

Index of Direct Investigations and Direct Investigation Assessments Completed

Direct Investigations	
OMB/DI/190	Fire Safety Regulatory Measures
OMB/DI/184	Allocation and Monitoring of Government Land
OMB/DI/183	Driving-offence Points System
OMB/DI/194	Management of Non-emergency Ambulance Transfer Service by Hospital Authority
OMB/DI/206	Transport Department Actions for Safe Operation of Public Light Buses
OMB/DI/203	Enforcement against Unauthorised Building Works in New Territories Exempted Houses
Direct Investigation Assessments	
OMB/DI/207	Misidentification of Newborn Babies at a Hospital
OMB/DI/211	Operation of Unlicensed Ferry Service with Speedboats
OMB/DI/214	Provision of Information about Government Officers
OMB/DI/210	Continuing Education Fund
OMB/DI/220	Structural Safety of Units of Old Buildings with External Walls Replaced by Glass-walls
OMB/DI/213	Illegal Operation of Guesthouses and Bedspace Apartments
OMB/DI/217	Regulation of Karting Activities
OMB/DI/215	Application of Marking Scheme in Public Rental Housing and Tenants Purchase Scheme Housing
OMB/DI/224	Development of a Question Paper in the HKAL Examination
OMB/DI/228	Handling of "Missing Patients"



Annex 6

Summaries of Direct Investigations Completed

Buildings Department ("BD") and Lands Department ("Lands D")

Case No. OMB/DI/203
Enforcement against Unauthorised Building Works in New Territories Exempted Houses
(Investigation declared on 8 July 2009 and completed on 31 March 2011)



Background

To curb the proliferation of Unauthorised Building Works ("UBW"), it is Government policy that BD should take priority action against "new" UBW, i.e. UBW completed within 12 months. However, for UBW in New Territories Exempted Houses ("NTEHs"), BD will take enforcement action only against UBW in progress ("WIP"), not even those "practically completed", i.e. the construction of the concrete framework of the structure or the cover of the stairhood of the building has been completed; while Lands D will accord high priority of lease enforcement action only to cases of blatant breach, such as erection of an over-sized NTEH.

2. Against this background, The Ombudsman initiated this direct investigation to examine the effectiveness of the current enforcement regime and areas for improvement.

Observations

Questionable Efficiency and Effectiveness

3. Of the 2,400 WIP cases received by BD between 2007 and 2010, only 755 (31%) were confirmed to be WIP cases and, therefore, subject to enforcement action – a reflection of BD's restrictive action threshold. Despite BD's issuance of removal orders in 721 of those cases, only 285 cases (40%) have been resolved. Only 118 (5%) of the 2,161 cases handled by Lands D have yielded positive result (UBW purged). Of the rest, warning letters have been issued and registered in the Land Registry in 1,147 cases (53%).

4. The slow rate of enforcement of removal orders by BD and the mere registration of warning letters in the Land Registry by Lands D is highly unsatisfactory, especially in the light of the increase in the number of complaints against UBW in NTEHs (49% increase from 2007 to 2010).

Narrow Opportunity for Enforcement

5. Under the current enforcement regime for UBW in NTEHs, UBW which are simple and fast to build could easily escape enforcement.

Defying Common Sense and Logic

6. In many of the cases we studied, despite the availability of evidence for substantiating the WIP status, BD did not classify the UBW as WIP because the main structures of the UBW had been completed. Such decisions, though technically defensible by reference to the definition of WIP, clearly defy common sense and logic and are certainly not in line with Government's commitment to curb the proliferation of UBW in NTEHs.

Inequity between NTEHs and Other Buildings

7. The present restrictive WIP policy for UBW in NTEHs is inconsistent with the general approach for other buildings, under which BD takes immediate action on "new" UBW. The WIP policy unnecessarily causes inequity between NTEHs and other buildings, and gives a signal that owners of NTEHs are privileged.

Inconsistent Application of Action Criteria

8. The definition of WIP is capable of being interpreted loosely and differently by BD and Lands D staff. Such inconsistencies result in a waste of time and efforts in referrals between the two departments and abortive visits, as well as unfairness in enforcement action.

Delay

9. Delays in action have been caused by the spending of excessive time on ascertaining the status of WIP or simply tardiness on the part of the departments.

Lack of Recourse against Owners' Stalling Tactics

10. Some owners of UBW adopt stalling tactics by refusing BD or Lands D entry for inspection or arguing at length about the completion date of the UBW to prove that the UBW should not be subject to immediate enforcement action. Such stalling tactics are fuelled by the lack of decisive action on the part of the Administration.

Improper Keeping of File Records

11. The inspection reports by BD's consultants provide first-hand information about UBW. However, BD may deviate from the assessments and recommendations of its consultants, without providing the reasons in the case files or to the consultants. This does not help to ensure that BD's decisions are well-grounded and consistent and that its consultants understand BD's requirements.

Lack of Monitoring

12. The Development Bureau ("DEVB"), BD and Lands D do not systematically collect and monitor statistics on UBW in NTEHs, which makes it difficult, if not impossible, to assess accurately the effectiveness of the enforcement regime for UBW in NTEHs.

Feasibility of Expanding the Coverage of Enforcement

13. DEVB and BD expressed difficulties in expanding the scope of enforcement to cover "new" UBW in NTEHs, as many NTEHs do not have detailed building plans and other evidence required by BD to ascertain the "UBW" or "new" status.

14. We, however, find that the difficulties in proving the "unauthorised" status of UBW in NTEHs do not apply to every case. DEVB and BD have also set too high a standard of proof for themselves for establishing the "new" status of UBW.

Conclusion and Recommendations

15. The Ombudsman recommends that:

(a) the Administration scrap the WIP policy altogether to bring effective enforcement action against UBW in NTEHs in a manner that is fair and consistent compared to that against other buildings;

(b) BD and Lands D align the departments' understanding and practices and set up a database of relevant cases;

(c) BD and Lands D streamline the departments' procedures for more efficient operation;

(d) BD and Lands D explore alternative methods of collecting evidence such as resorting to technological devices or soliciting the assistance of complainants or nearby residents;

(e) BD record its decisions on UBW cases and the rationale behind them and make them known to its consultants; and

(f) DEVB, in association with BD and Lands D, expeditiously size up the problem of UBW in NTEHs for objective assessment of the effectiveness of its enforcement regime.

Education Bureau ("EDB") and Lands Department ("Lands D")

Case No. OMB/DI/184
Allocation and Monitoring of Government Land
(Investigation declared on 23 June 2009 and completed on 7 September 2010)



Background

Government land policy stipulates that for Government land allocated by Lands D to another Government department, the latter will assume responsibility for managing the land. We found, however, that this policy was not followed in one case involving a piece of Government land ("the Site"), which had been allocated in 1974 by the New Territories Administration ("NTA"), the predecessor of Lands D, to the Education Department ("ED"), the predecessor of EDB, for use by a sports Association ("the Association").

Observations

Shirking of Responsibility

2. EDB denied responsibility for managing the Site on the grounds that "NTA and the Association were well aware of the fact that the Site was actually allocated to the Association using the technical means of Government Land Allocation … to effect an administrative convenience". In support of this argument, EDB referred to the Engineering Conditions of the allocation of the Site issued by NTA, which named the Association, and the direct contacts between NTA and the Association on matters pertaining to the use of the Site.

3. Lands D retorted that the Site was allocated to ED, not to the Association. If the Site had been allocated to the Association, that would have been done by Short Term Tenancy or Private Treaty Grant, not by Government Land Allocation to a Government department.

4. To us, the Engineering Conditions and the direct contacts between NTA and the Association are no evidence that the Site was allocated to the Association direct. ED's request to NTA for land and NTA's allocation of the Site to ED in 1974 were stated in unequivocal language and properly documented on file. The allocation conformed with the prevailing land policy. These show ED, and now EDB, to be the allocatee of the Site.

5. As the allocatee of the Site, EDB should have acted responsibly by tackling the persistently low utilisation of the Site.

Lack of Monitoring

6. EDB claimed to have "supervised" the Association by collecting from it yearly figures of activities and by paying half-yearly visits to the Association.

7. The Bureau should have done much more. At least, it should have worked out proper arrangements with the Association for monitoring and appraisal to ensure that its policy support to the Association continued to be justified.

Recommendations

8. The Ombudsman recommended that:

(a) EDB keep a close watch over the use of the Site by the Association to ensure that the agreed aims and objectives are achieved;

(b) EDB make proper arrangements for monitoring and appraising the activities of the Association;

(c) EDB stop the use of the Site by the Association in case of continued under-utilisation or abuse, and to return it to Lands D; and

(d) Lands D, in consultation with all bureaux/departments, examine whether any similar cases exist and to rectify any anomalies as soon as possible.

Fire Services Department ("FSD") and Food and Environmental Hygiene Department ("FEHD")

Case No. OMB/DI/190
Fire Safety Regulatory Measures
(Investigation declared on 2 June 2009 and completed on 7 May 2010)



Ambit

This direct investigation examined:

(a) the procedures and practices in enforcement of regulatory measures for fire safety applicable to all premises;

(b) the administration of arrangements for fire safety in licensing food premises; and

(c) the mechanism for monitoring compliance with fire safety on food premises.

FSD's Statutory Certification System

2. By law, owners of premises have to keep their fire service installations or equipment ("FSI") in efficient working order at all times. They also have to engage registered contractors ("RCs") to inspect their FSIs once every 12 months. After inspection, the RC has to report the results to the owner on a certificate, commonly known as FS251, within 14 days, with a copy to FSD.

Loose and Ineffective Monitoring

3. FSD manually checks FS251s received against those previously received to identify premises with overdue inspection. This procedure is labour-intensive and FSD finds it difficult to prove whether and when RCs have submitted their FS251s.

4. FSD is developing a computer system for generating lists of premises with overdue inspection of FSI. It is also considering legislative amendment to require its endorsement of FS251s before RCs issue them to owners of premises. These would facilitate FSD's monitoring of the inspections.

Lack of Transparency with FS251s

5. As owners of premises have no statutory obligation to display FS251s, users of the premises do not readily know the state of fire safety of the premises and are unable to report defects. FSD is considering legislative amendment to require conspicuous display of FS251s, which would provide a strong incentive for owners to arrange timely inspection and proper maintenance of their FSI.

Inadequate Follow-up on FS251s Received

6. FSD classifies FS251s received into high or low priority cases by the nature and severity of the defects reported therein. For high priority cases, FSD aims to inspect the premises immediately to determine if enforcement action is necessary. For low priority cases, FSD merely issues advisory letters to urge the owners to rectify the defects.

7. Each year, about 80% of cases are classified as high priority, and about 20% as low priority. However, FSD manages to inspect only 60% of cases, which means that at least about 20% of high priority cases are not checked by FSD. Low priority cases are even more likely to be taken lightly by owners, as FSD will not take further action after issuing advisory letters.

RCs to be Gatekeepers

8. Currently, the law requires RCs to merely inspect FSI and report results to FSD. The onus is on FSD to ensure that owners rectify the defects reported.

9. It would be desirable for FSD to require RCs to make good FSI before submitting FS251s to FSD. With RCs acting as gatekeepers, FSD can better utilise its resources in monitoring compliance by RCs and owners of premises.

Low Prosecution Rate

10. FSD had initiated only a very small number of prosecutions, not only with regard to RCs' non-submission of FS251s, but also to owners' failure to check FSI annually and obstruction to or locking of means of escape.

Licensing and Inspection of Food Premises

11. FEHD is the licensing authority for food premises. Food business licences are renewable every 12 months.

Omission in Licence Conditions

12. An applicant for a new food business licence has to produce evidence showing that health, fire safety and other requirements have been met. However, once issued, the licence only requires the licensee to comply with food hygiene conditions; it does not specify any fire safety requirements.

Deficiency in Renewal of Licence

13. In processing applications for renewal, FEHD neither requires from the licensee any documentary evidence of, nor arranges with FSD to inspect the food premises for, continued compliance with fire safety requirements. Such renewal of licences without compliance with fire safety requirements gives the public a false assurance of safety.

Inadequate Inspection

14. There were about 22,000 licensed food premises as at the end of 2009. FSD aims to conduct a surprise inspection on each food premises every five years. Between 2006 and 2009, the number of surprise inspections conducted by FSD each year ranges from 78 to 513, falling seriously below its target. Such a small number of surprise inspections could hardly spur licensed food operators to maintain fire safety on their premises at all times.

Recommendations

15. The Ombudsman made 11 recommendations to FSD and FEHD, including the following:

(a) FSD should expedite the setting up of its computer system and the legislative amendment to enable prompt identification of owners of premises and RCs failing to comply with statutory requirements;

(b) FSD should promote conspicuous display of FS251s on premises, while considering legislative measures for mandatory display;

(c) FSD should inspect all high priority cases and conduct random checks on low priority cases;

(d) FSD should consider requiring RCs to make good FSI before submitting FS251s to the Department;

(e) FSD should step up prosecution against non-compliance with fire safety regulations;

(f) FEHD should impose conditions in food business licences for compliance with fire safety requirements;

(g) FEHD should work out arrangements with FSD to ensure that food premises meet fire safety requirements before approving their applications for licence renewal; and

(h) FSD should comprehensively review its frequency of surprise inspections and manpower requirements.

16. FSD and FEHD have accepted these recommendations.

Hospital Authority ("HA")

Case No. OMB/DI/194
Management of Non-Emergency Ambulance Transfer Service
(Investigation declared on 2 September 2009 and completed on 16 December 2010)



Background

In view of complaints handled on the delay and uncertainty of the Non-Emergency Ambulance Transfer Service ("NEATS") by the Hospital Authority ("HA"), The Ombudsman decided to initiate a direct investigation to examine:

(a) the booking system and scheduling of the NEATS fleets;

(b) mechanism for monitoring the service; and

(c) areas for improvement.

Operation of NEATS

2. Eligible users of the NEATS service include stretcher-bound patients; wheelchair-bound patients living in a place inaccessible by lift; and mentally or sensorily impaired patients without escort on discharge from hospital. Users of the NEATS service are broadly classified into two categories: out-patients and in-patients.

(a) Out-patients include patients attending specialist out-patient clinics or day hospitals for scheduled appointments. Bookings for out-patients are made in advance on a first-come-first-served basis. There is a quota system under which each clinic or day hospital is allocated a pre-set quota daily to transfer patients between their residence and clinics.

(b) Requests by in-patients are for transfer between hospitals and on discharge at the end of a hospital stay. Such requests are usually made on the day of transfer or discharge.

3. Eight foremen in HA draw up routes every day by matching accepted requests with ambulances and staff available. They will draw up routes for out-patients first before adding requests from in-patients received to the routes planned. If this is not possible, they will re-arrange the routes by regrouping patients as the day progresses. While the scheduling process aims to maximise utilisation of ambulances and staff, availability of service to in-patients is difficult to confirm at the time of service request.

Problems Identified and Our Observations

Long Waiting Time

4. HA had service standards in respect of in-patients only. We consider that service standards should also be set for waiting time by out-patients. For outbound trips, waiting time should be measured between the scheduled arrival time and the boarding time of the ambulance. For return trips, waiting time should start to be counted when the patient is ready to get on the ambulance.

Uncertainty of Service

5. Uncertainty of service arises where an in-patient, having been informed that he is to be discharged or transferred, is not informed of whether and when an ambulance will be available to him. In our case studies, the in-patients were not informed of when an ambulance would arrive on the day of their discharge. One went home by other means while the other spent an extra night in the hospital. HA should explore ways to enhance certainty of service to patients such as setting a timeframe for notifying patients whether their requests for service can be met on the day.

Punctuality of Service

6. HA failed to meet its standard on punctuality for out-patients since 2007. For the past three years, over half of the out-patients using NEATS were late to attend medical appointments for over 30 minutes. HA should look into the reasons of the low compliance rate of punctuality. This may require collecting and collating necessary data to assist HA to devise appropriate measures to improve its ability to meet the laid down service standard.

Meeting Unmet Demand for NEATS

7. We consider the inability of the existing provision of the NEATS service to meet demand a more fundamental problem. HA's statistics concealed demand turned away when patients were frustrated by long waiting time and uncertainty of service. HA should collect more data in this respect and analyse them more systematically so as to have a better understanding of the size of the unmet demand and introduce measures to deal with it.

8. HA should consider alternative measures to meet the overall demand for the NEATS service which has been increasing. One possibility is to tap resources from non profit-making organisations providing similar services. In addition, HA should strive to prioritise requests according to the degree of patients' reliance on NEATS and urgency for transport service.

Recommendations

9. The Ombudsman made eight recommendations to the Chief Executive of HA, including the following:

(a) introduce a new service standard for the waiting time of out-patients;

(b) explore ways to enhance the certainty of service;

(c) look into the reasons of the low compliance rate of punctuality;

(d) collect more data for unmet demand and analyse them more systematically to understand the size of the problem and introduce measures to deal with it;

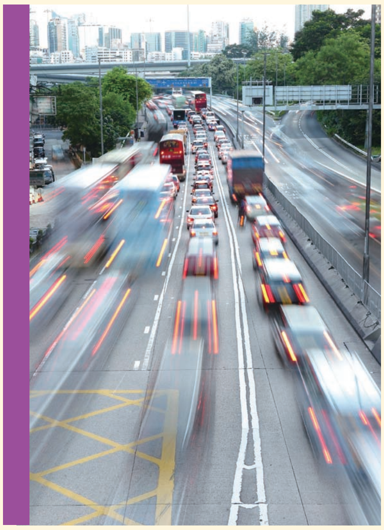
(e) explore the possibility of engaging non profit-making organisations and commercial operators in providing supplementary service; and

(f) prioritise the service targets of the NEATS service.

10. HA has accepted our recommendations.

Transport Department ("TD")

Case No. OMB/DI/183
Driving-offence Points System
(Investigation declared on 19 March 2009 and completed on 6 September 2010)



Background

A driver who has accumulated 15 driving-offence points ("DOP") within two years is liable to be disqualified by the court from driving. However, it was found that some drivers with 15 or more DOP were able to evade receipt of court summonses for disqualification hearing. Hence, the Administration proposed in February 2009 to amend the Road Traffic (Driving-offence Points) Ordinance ("the DOP Ordinance").

2. Concerned that the proposed amendment still seemed unable to promptly disqualify wilful evaders, The Ombudsman decided to initiate a direct investigation to assess the effectiveness of the proposed amendment.

The 2009 Amendment

3. The amendment took effect on 29 May 2009. Following the amendment, summonses are served, as before, by ordinary post first. However, if the driver does not appear in court, the summons will be served again by registered post to the driver's last known address. The summons will be deemed served, even if it is returned undelivered. If the driver still does not appear in court, the court will issue a non-appearance arrest warrant, upon which the Police will step in to ask the driver to surrender to a Police station or to the court. The Commissioner for Transport ("C for T") has also been empowered to refuse to issue, reissue or renew the driving licence of the driver who has been served a summons and has failed to appear in court for it.

Our Observations

Loophole

4. Eight months after the 2009 Amendment, there remained a considerable number (210) of recalcitrant drivers who had not appeared in court for disqualification hearing although non-appearance arrest warrants had been issued against them. Those drivers could not be disqualified from driving until they show up for court hearing or their driving licences expire.

No Disincentive for Evasion

5. There is no provision under the DOP Ordinance for additional penalty on wilful evaders. This is unfair to those drivers who readily accept disqualification.

6. There is also no incentive for compliance, such as acceptance of drivers' plea of guilt and acceptance of disqualification by letter to the court.

Limited Effect of Non-renewal

7. Most driving licences are valid for as long as ten years. The non-renewal of driving licences, therefore, has limited deterrent effect on drivers who evade court hearing.

Need for Further Streamlining

8. Although the Transport Department ("TD") has reduced the processing time for commencing disqualification action from 14 to 7 weeks, further speeding up is deemed necessary.

Recommendations

9. The Ombudsman recommended, inter alia, that the Administration/TD:

   (a) consider legislation to empower the court to impose a longer disqualification period on evidence of any deliberate attempt by drivers to frustrate law enforcement;

   (b) consider accepting drivers' guilty plea by letter to the court, to enhance efficiency and effectiveness;

   (c) consider empowering C for T to refuse issue and renewal of other licences, such as vehicle licences, to any driver who evades court attendance or Police arrest; and

   (d) streamline its procedures and practices to further shorten the disqualification process.

10. The Administration/TD has accepted the above recommendations.

Transport Department ("TD")

Case No. OMB/DI/206
Actions for Safe Operation of Public Light Buses
(Investigation declared on 21 January 2010 and completed on 17 December 2010)



Background

Public Light Buses ("PLBs") are one of the most popular modes of public transport in Hong Kong. However, statistics show that the incidence of accidents involving PLBs over the past decade has been significantly higher than that of other classes of motor vehicle. TD had undertaken in 2000 to examine and develop safety enhancement measures for PLBs, after several fatal accidents involving PLBs. Nevertheless, little progress was made in the following nine years and actions were only accelerated after two major fatal accidents involving PLBs in June and July 2009.

Observations and Opinions

Lacking Due Diligence and Sense of Urgency

2. **Speed Limiter**. TD's enquiries with the major manufacturers of PLBs regarding the installation of speed limiters only started in November 2005, four days after a fatal PLB-related accident had happened. Thereafter, TD's follow-up enquiries with the manufacturers in November 2006 and May 2008 were no more than routine requests for update. Again, it was not until another fatal PLB-related accident happened did TD follow up the issue with the manufacturers again in June 2009. TD has been taking prompt follow-up actions since then. Nevertheless, the issue had been put on the back burner for some four years.

3. **Blackbox**. TD did not directly commission trial on the use of blackbox on PLBs, but only facilitated three trials volunteered by suppliers. Owing to its passive role, TD had no control over the timing and direction of the trials. TD once asked the Hong Kong Productivity Council ("HKPC") for advice in early 2007, but did nothing after receiving HKPC's proposal.

4. **Training of PLB Drivers**. The government-subsidised PLB driver training courses have been introduced for more than six years. However, up to end of 2009, only 1,138 drivers had attended such courses, representing only about 10% of the active PLB drivers. TD's promotion efforts were minimal. It was also unacceptable for TD to take more than four years to prepare the mandatory pre-service training for PLB drivers. Most of the details of the scheme have been readily available, with training content, assessment criteria, etc to be modelled on existing similar programmes.

Want of Timely Review

5. PLBs registered on or after 1 August 2004 were mandated to install passenger seat belts and high back seats, while those registered prior to that date were allowed to retrofit voluntarily. As at 30 September 2010, only 2,415 (about 55.5%) of the 4,350 PLBs running on road were equipped with such equipment. If relying solely on attrition of the "pre-August 2004" PLBs, it would take at least eight years for all PLBs to be equipped with such equipment. By any estimation, there would still be about 1,000 PLBs running on the road without such equipment by the end of 2015. It is unacceptable to put passengers at risk for at least another eight years. With the mandatory scheme introduced for six years now, we consider it important for TD to review progress. The feasibility of setting a time table or cut-off date for mandatory installation of the equipment on all "pre-August 2004" PLBs should be considered.

Consultation Spectrum Too Narrow

6. Prior to June 2009, TD had relied mainly on its consultation with the major PLB suppliers and manufacturers to determine the technical feasibility of installation of speed limiter. On the technical aspect of installing blackboxes on PLBs, TD had only consulted HKPC but had taken no follow-up action on HKPC's proposal. TD should have adopted a broader approach by contacting other resourceful players in the field, such as academic and professional bodies, and acquiring more independent opinions. Such opinions are essential in making a thorough and balanced assessment on whether, when and how to proceed with the introduction of safety enhancement measures.

Inertness towards Market Information and Overseas Experiences

7. TD was apparently inert to the availability of various models of speed limiter and blackbox in the local market. Neither was it sensitive enough to pick up relevant intelligence, such as trials on speed limiters voluntarily conducted by members in the trade. Moreover, in the European Union and the United Kingdom, vehicles similar to PLBs in Hong Kong were required to retrofit speed limiter in phases between 2005 and 2008. Hong Kong has fallen behind other advanced countries.

Recommendations

8. The Ombudsman made six recommendations to TD:

(a) extending the requirement of installing passenger seat belts to all "pre-August 2004" PLBs;

(b) working out specific measures against tampering of speed limiter and blackbox installed;

(c) making good use of data stored in blackboxes;

(d) close monitoring of progress of each and every safety measure under study;

(e) seeking necessary assistance from relevant experts; and

(f) staying in touch with market information and regulatory trends worldwide.

9. TD has accepted all the recommendations except for the one on retrofitting all "pre-August 2004" PLBs. It agreed only to discuss with the PLB trade and PLB suppliers on possible and viable ways to speed up the replacement progress as far as practicable. We maintain that lives of PLB passengers should not be put at risk. We strongly urge the Administration to reconsider our recommendation.



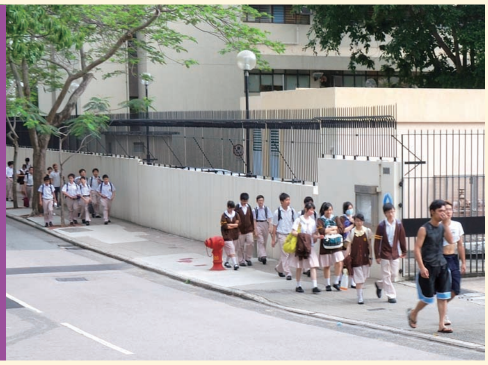
Annex 7

Summaries of Selected Cases Concluded by Inquiry

(Where applicable, the specific aspect of maladministration established is highlighted for clearer focus at the end of the case summary)

Education Bureau ("EDB")

Case No. OMB 2010/2854 – Central allocation of secondary school places
Allegation: failure to properly monitor the processing of applications for admission by a secondary school



Details of Complaint

The complainant applied for admission to a Direct Subsidy Scheme ("DSS") secondary school ("School A") for her son, but eventually declined the school's admission. Instead, she enrolled her son in EDB's central allocation of secondary school places ("Central Allocation"). To her surprise, her son was consequently allocated a place in School A. She queried EDB about the result. EDB replied that according to School A, she had accepted the school's offer of admission and paid the reservation fee; hence, EDB assumed that she had chosen not to let her son participate in the Central Allocation.

2. Although the complainant at last managed to find a place in another secondary school for her son, she blamed EDB for having failed to check all the documents submitted by School A and perfunctorily concluded that she had accepted the school's offer, as a result of which her son was deprived of his right to participate in the Central Allocation.

EDB's Explanation

3. EDB explained that out of negligence, staff of School A had confirmed that the complainant's son had accepted its offer of admission. Accordingly, EDB had issued an advisory letter to the school, urging it to make improvement.

Our Comments

4. As the coordinating body for the Central Allocation, EDB should have ensured that every procedure under the system was proper and correct. This complaint showed a major slip in the procedures and EDB should be held accountable.

5. We were pleased that EDB had learned from this case. To prevent recurrence of similar incidents, it had reviewed and improved the arrangements for submission by DSS secondary schools of name lists of students admitted to the schools.

A case of carelessness and faulty procedures

Home Affairs Department ("HAD") and Lands Department ("Lands D")

Case Nos. OMB 2010/1901-1902 – Permitted burial ground
Allegation: evading management responsibility



Details of Complaint

The complainant called the 1823 Call Centre ("Call Centre") to report the unsafe mud trail and steps leading to a permitted burial ground for indigenous villagers in the New Territories. She requested the department concerned to build concrete steps and railing. The Call Centre referred the case to the local District Office ("DO") under HAD and the local District Lands Office ("DLO") under Lands D, but both DO and DLO replied that what the complainant requested was not within their purview. The complainant alleged that the two offices had evaded their responsibility and they were unwilling to follow up on her request.

Our Findings

2. Noting the complainant's request, the Call Centre had contacted DLO and then DO. DLO suggested the Call Centre to enquire of DO. However, DO indicated that it was only responsible for verifying the identity of indigenous villagers, while granting land for and management of permitted burial grounds should be DLO's responsibility.

3. After receiving the Call Centre's referral, DLO conducted a site visit and found some concrete steps already been built on the mud trail. DLO subsequently replied to the Call Centre that facilities on the burial ground were not within its purview and that the Call Centre should enquire of DO about them. In response, DO explained that construction of a footpath within the burial ground was also not within the purview of HAD's Minor Works Programme. Besides, both offices stated that the concrete steps on the burial ground were not built by them.

Response from HAD

4. According to DO, the burial ground was Government land and should, therefore, be managed by DLO. DO was only responsible for issuing burial certificates to eligible indigenous villagers in the New Territories. Moreover, HAD's Minor Works Programme would only fund projects benefitting the public at large. As the steps and railing proposed by the complainant would benefit only visitors to the burial ground, it would be inappropriate for such construction works to be funded by the Programme.

Response from Lands D

5. Lands D stated that it was not responsible for the management of cemeteries and so would not manage or maintain any facilities within the burial ground. In this case, Lands D had actually assisted the Call Centre by referring the complainant's request to DO for follow-up action.

Our Comments

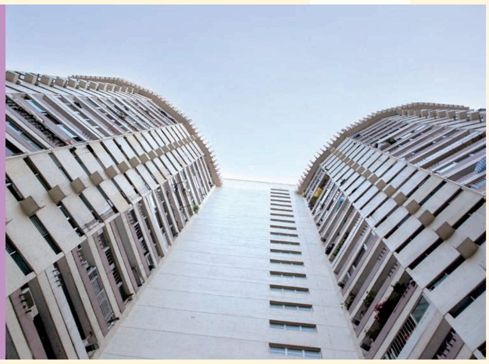
6. We agreed that neither HAD nor Lands D had an obligation to build the facilities requested by the complainant on the burial ground. Furthermore, HAD's Minor Works Programme could not fund facilities that benefit only visitors to the burial ground. Visitors to the graves should, therefore, consider providing the facilities themselves.

7. Nonetheless, this case, along with some other relevant cases, reflected the long-standing divergent views between HAD and Lands D regarding their jurisdiction over permitted burial grounds and related matters. This resulted in inefficient handling of public enquiries and complaints. The two departments should jointly review the issue.

A case of unclear demarcation of responsibility

Hong Kong Housing Society ("HKHS")

Case No. OMB 2010/1345 – Handling of enquiries
Allegation: handling the complainant's repeated enquiries perfunctorily, thus causing her to lose the chance to apply for a Sandwich Class Housing Scheme unit



Details of Complaint

The complainant applied to HKHS for a Sandwich Class Housing Scheme ("SCHS") unit and submitted her application form by post. Later, she found that the application fee had not been deducted from her bank account. She suspected that the application form had gone astray and so telephoned HKHS to enquire about it.

2. Unable to locate her application record on the computer, HKHS staff advised her to call again after the closing date of application. However, when she called again as advised, the HKHS staff suggested that she should call again later. She, therefore, left her personal particulars and waited for HKHS's reply. Afterwards, she called HKHS again several times and learned that it had never received her application. Her request to submit another application was also rejected. The complainant alleged that HKHS had acted perfunctorily in handling her repeated enquiries and she ended up losing the chance to apply for an SCHS unit.

Improper Practice and Lack of Records

3. The complainant had suspected that her application form had gone astray because her cheque had not been cleared. Despite her repeated enquiries, the HKHS staff concerned failed to give her a definite answer. Nor did they offer any concrete suggestions, such as submitting her application again. They merely advised her to enquire later and said that she should check with her bank about the cheque clearing status. This was improper. Owing to the huge number of applications, HKHS could not input all the data into its computer system in the first instance and the accuracy of information in its replies to enquiries was thus affected. Although the situation was understandable, it was certainly undesirable.

4. Three working days before the closing date for application, HKHS staff still advised the complainant to enquire later. It was indeed unreasonable. HKHS staff claimed that they had telephoned the complainant before the closing date, hoping to inform her that they had no record of her application. However, the call was not answered. As HKHS was unable to provide the relevant communication records as evidence, we could not verify the staff's claim.

Our Comments

5. This Office suggested that HKHS learn from this case and introduce proper measures as soon as possible to improve its service in processing applications and handling telephone enquiries so as to avoid recurrence of similar incidents. Meanwhile, HKHS staff should record important follow-up actions for timely monitoring and review of case progress.

A case of impropriety in practice

Housing Department ("HD")

Case No. OMB 2010/1005 – Public housing repairs
Allegation: failure to replace the damaged front door of a public housing unit as quickly as possible after a burglary



Delayed Front Door Repairs Prolonged Anxiety

The complainant's public housing unit was broken into and the metal gate and wooden frame of the front door were damaged. Apart from immediately calling the Police, the complainant asked the estate office when they could repair the wooden door for her. HD staff, however, told her that the maintenance workers were already off duty and so repairs had to be arranged the following day.

2. On the following day, maintenance workers reinstalled the wooden door frame and took measurements of the door. The complainant was told that a new wooden door should be installed for her in about ten days. She called the estate office twice afterwards to check progress of the matter, but the staff concerned neither answered nor returned her calls. HD finally replaced the wooden door nearly a month after the incident while the complainant was left in fear and anxiety during this period.

HD's Response

3. HD staff visited the complainant's unit on learning that it was burgled. As the Police was conducting crime scene investigation and when this was finished the maintenance workers were gone, repairs of the wooden door and door frame could not be arranged on the same day. Nevertheless, the staff concerned had instructed the security guards to patrol more frequently.

4. The contractor repaired the wooden door of the complainant's unit the following day to restore its locking devices. Since it would take more than ten days to order a new door, HD had to confirm the installation date with the complainant later. Actually, HD had repeatedly urged the contractor to expedite the arrangements while strengthening security in the estate.

5. Meanwhile, HD apologised for its staff's failure to return the complainant's calls and instructed the staff concerned to make improvement.

Our Comments

6. HD should have put itself in the tenant's shoes and arrange for repairs of the wooden door at the soonest, rather than procrastinating on the excuse that the maintenance workers were already gone for the day. As a matter of fact, those workers were not yet off duty at that time. Besides, when HD later issued the repair works order, it only accorded "normal priority" to the replacement of the door. HD has not tried its best to expedite the replacement of the front door to alleviate the complainant's anxiety.

7. The Department should review its classification of repair services, give priority to cases that pose an immediate threat to tenants' lives and properties and arrange promptly for emergency repairs.

A case of lack of consideration for clients

Judiciary Administrator ("JA")

Case No. OMB 2010/1442 – Staff attitude
Allegation: staff being bureaucratic and frivolous



Omission to Issue Receipt Not Properly Followed Up

The complainant went with his elder brother to the Family Court Registry ("the Registry") under the Judiciary to pay certain court fees. Following the instructions of the staff at a counter ("Counter A"), they paid $658 at another counter ("Counter B"). However, they did not notice that they were only issued a receipt for $630. When they returned to Counter A, the staff asked for a receipt for $28 because the relevant formalities could not be completed without that receipt. They were told to check with the staff at Counter B.

2. They told the staff at Counter B that they had not received the receipt for $28 and requested her to issue another one but were refused. They then asked the staff at Counter A to exercise discretion in handling their case but the request was also turned down. The staff at Counter A even suggested that they pay $28 again at Counter B. When they expressed their dissatisfaction, the staff replied frivolously that there was nothing she could do to help.

3. In the end, they paid again at Counter B and completed the formalities at Counter A. About half an hour later, a staff member of the Registry telephoned them to confirm that they had been overcharged by $28 and asked them to return and get the refund. They replied that they had already left the Registry and would not go back.

4. The complainant was dissatisfied that the staff concerned had acted in a bureaucratic and frivolous manner, refused to look into the matter and only asked them to pay again. He thus lodged a complaint with this Office.

Mistakes Admitted and Remedies Made

5. JA noted that this incident was mainly because the staff at Counter B had omitted to issue the receipt for $28 whilst the two counter staff members concerned lacked alertness and coordination. As a result, the complainant and his elder brother had had to go back and forth between the two counters but of no avail. JA considered its action unacceptable, refunded the amount overcharged and extended its apologies to the complainant and his elder brother.

Our Comments

6. We had listened to the recorded conversation between the complainant and the staff at Counter B. We considered that she had not acted in a frivolous manner but that she was indeed not proactive. As regards whether the attitude of the staff at Counter A was poor, since there was no recording device at Counter A, we could not decide in the absence of objective evidence. However, we were certain that she lacked a positive attitude.

7. We were pleased to note that JA had reminded the staff members concerned to be patient and polite when handling public enquiries and requests. Meanwhile, JA had also instructed its staff to check with payers all amounts of payment against various receipts issued so as to prevent recurrence of similar incidents.

A case of lack of positive attitude among staff

Lands Department ("Lands D") and Housing Department ("HD")

Case Nos. OMB 2009/4411-4412 –
Rehousing upon clearance
Allegations:
Lands D – failing to notify the complainant of changes in the clearance date
HD – unfairly using the 2007 yardstick to assess the complainant's income and assets in 2009 when processing her application for rehousing



Complaint about Inadequate Notice and Unfair Yardstick

The squatter hut where the complainant and her family members were living had to be earmarked for clearance because it fell within the site of a Government highway widening project. The clearance date was subsequently changed several times but Lands D failed to notify the complainant of such changes.

2. As the complainant applied for rehousing upon clearance, Lands D referred her case to HD. When assessing the eligibility of the complainant and her family members for public housing, however, HD used the 2007 yardstick to assess their income and assets in 2009 on the grounds that Lands D first announced the clearance in 2007. The complainant considered this unfair.

Response from Lands D

3. Details of the highway widening project were gazetted in October 2007. On the date of gazette, the Clearance Office under Lands D conducted a pre-clearance survey at the complainant's squatter hut. A survey notice and a squatter clearance notice were posted to notify her of the estimated clearance date.

4. Because of unexpected delays in the commencement of the project, staff of the Clearance Office subsequently visited the affected structures several times and updated the squatter clearance notices to notify the clearees of the latest clearance date. The complainant, therefore, should have been aware of the revised clearance date.

Response from HD

5. Each year, HD would issue internal guidelines to set out the income and net asset limits regarding applications for public housing. These are applicable to all Government clearance operations or rehousing arrangements after natural disasters that occur on or after the effective date.

6. The affected residents of a clearance area applying for public housing may not undergo the required Comprehensive Means Test at the same time. To ensure fairness, HD would adopt the income and net asset limits of the year of pre-clearance survey when assessing the residents' eligibility for rehousing. As the pre-clearance survey covering the complainant's squatter hut was done in 2007, the income and net asset limits of that particular year should be used in its assessment process under the established policy and guidelines.

7. Moreover, as the complainant refused to provide the information on her income and assets, it was impossible for HD to assess her eligibility for rehousing. In this light, HD held that there was no impropriety in handling the case.

Lands D Should Give Early Notification

8. We observed that the Clearance Office had updated the squatter hut clearance notices only when it was very close to or even beyond the initial estimated clearance dates. As a result, the residents affected were not given reasonably sufficient notification of the revised clearance date and their removal arrangements could thus be affected. Lands D should, therefore, review its existing practice so that the residents could be informed at the soonest to allow for sufficient time for the necessary preparation.

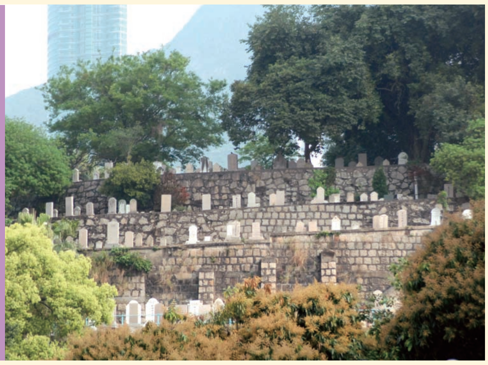
HD Should Clarify Policy Direction and Work Procedures

9. After careful examination of the relevant information (including the policy approved by the Hong Kong Housing Authority and HD's internal guidelines), we found that there was inadequate policy support for HD's practice of using the income and net asset limits of the year of pre-clearance survey to assess an applicant's current eligibility for rehousing upon clearance. To remedy the situation, HD should review its existing policy so that there would be clear policy direction and implementation procedures, while ensuring fairness for all applicants.

A case of lack of flexibility and careful consideration

Lands Department ("Lands D") and Home Affairs Department ("HAD")

Case Nos. OMB 2010/2432-2433 – Unauthorised graves
Allegation: improper handling of report of unauthorised graves



Details of Complaint

The complainant reported to a District Lands Office ("DLO") in the New Territories under Lands D about some unauthorised graves newly built near her residence. According to DLO, the site was a designated burial ground for indigenous villagers, but prior approval from HAD was required before any graves could be built. DLO referred the complainant's report together with pictures of the site to the local District Office ("DO") under HAD to verify whether the graves in question were unauthorised.

2. The complainant subsequently found that DO had not opened a case to follow up on her report because the images of the materials received from DLO by fax were blurred. She considered Lands D and HAD to have failed to handle her report properly.

Our Findings

3. The unauthorised graves reported by the complainant were within a permitted burial ground for indigenous villagers in the New Territories. After a site inspection, DLO sent pictures of the site to DO and requested the latter to follow up on the complainant's report. On receipt of the referral, DO put the information on file and checked its records of burial certificate applications to ascertain whether certificates had been granted for the graves in question.

4. The complainant contacted DLO and DO time and again for updates. The two offices conducted a number of site inspections, verified information and informed the complainant of progress.

Our Comments

5. It could be seen that DLO had duly referred the complainant's report to DO and the latter had promptly opened a case for follow-up and conducted site inspections with DLO.

6. It was probably due to misunderstanding that the complainant thought that DO had not opened a case to follow up on her report. In this light, DO had reminded the staff concerned to ensure that information provided to the public should be clear and accurate.

7. Overall, there was no impropriety on the part of DLO and DO in handling the complainant's report. Nevertheless, there was room for improvement in the cooperation between Lands D and HAD in the handling of issues relating to unauthorised graves. For example, the two departments could agree on which of them to take up the coordination role and communicate with people reporting irregularities. In addition, they should explore the scope for streamlining the procedures for site inspections and checking of burial certificates to enhance efficiency.

A case of need for better cooperation and streamlining of procedures

Transport Department ("TD")

Case No. OMB 2010/0339 – Bus schedule

Allegation: failure to properly monitor bus schedule



Scheduled Buses Arriving Late

The complainant went to work by bus on a certain route at noon every day. However, the scheduled buses around noon time often arrived late. He complained repeatedly to TD about the delay and also requested the Department and the bus company to increase the frequency of the bus service.

2. TD explained that the bus company had to do a survey on the number of passengers before deciding on whether a frequency increase was necessary. Meanwhile, the bus company replied that TD had rejected the request to increase the frequency. Afterwards, punctuality of the scheduled buses did improve, but the buses arrived late again after several months. He considered TD ineffective in monitoring the service.

Response from TD

3. The complainant initially lodged his complaint with the Transport Complaints Unit ("TCU") under the Transport Advisory Committee and the local District Council Secretariat ("the Secretariat"). TCU then referred his complaint directly to the bus company as he had not indicated that he wanted the case to be handled by TD. According to the bus company, the scheduled buses of the route at noon time were generally punctual. Given no significant increase in the number of passengers, TD's requirements for frequency increase could not be met. After issuing its reply, the bus company did not refer the case to TD for follow-up action.

4. It was only when the Secretariat later referred the case to TD that the Department learned about the complainant's allegation that it had failed to address his complaint against the bus company. TD thus issued a written reply to the complainant, stating that the service of the route generally met the requirements. As the complainant made no further complaint, TD considered follow-up action unnecessary.

5. After we had started our inquiry, TD checked its records and sent its staff to conduct site inspections. It confirmed that scheduled buses of the route around noon time generally met the demand and a frequency increase was unnecessary. Nevertheless, TD would continue to monitor closely the route's operation to ensure that scheduled buses would be punctual to meet the need of passengers.

Our Comments

6. On receipt of the complaint, TD had taken follow-up action and replied to the complainant. Since the complainant did not express any dissatisfaction at that time, it was reasonable for TD to close the case.

7. Nevertheless, our staff had conducted three site visits and found that the scheduled buses of the route did arrive late. We considered that the delay of the scheduled buses was not an occasional phenomenon and TD should really look into the matter.

A case of inadequacy in monitoring

Annex 8

Index of Cases Concluded by Full Investigation

Case No.	Complaint	Overall Conclusion	No. of Recommen-dations
Agriculture, Fisheries and Conservation Department			
2009/2136	Impropriety in handling a complaint about the misconduct of a member of its staff	Substantiated	4
Buildings Department			
2009/0621	Delay in handling a seepage complaint and failing to provide an investigation report to the complainant despite her repeated requests	Unsubstantiated	0
2009/2378	Mishandling a complaint about an unauthorised structure	Substantiated	1
2009/3854	(a) Failure to take action against an Owners' Corporation for removing building structures without the Department's prior approval (unsubstantiated); and (b) Failure to answer the complainant's enquiry properly (substantiated)	Partially substantiated	1
2010/0507	Failing to conserve an old tree within a statutory monument	Unsubstantiated	0
2010/1187	Failing to notify the complainants of their right of appeal against a removal order	Unsubstantiated	0
2010/5349 2010/5448 2010/5609 2010/5611 and others	Failing to take enforcement action against an unauthorised columbarium and other unauthorised building works at a temple	Unsubstantiated	0
Companies Registry			
2009/1768	Failing to follow up properly a complaint about the filing of company documents	Partially substantiated	3
Correctional Services Department			
2008/4834	(a) Unreasonably forbidding the complainant to take away his diary when released from prison (inconclusive); and (b) Refusing a request by the complainant's wife to pass clothes to him (partially substantiated)	Partially substantiated	4

Case No.	Complaint	Overall Conclusion	No. of Recommen-dations
2010/0095	(a) Providing the complainant with misleading information (unsubstantiated); (b) Delay in submitting the complainant's application under the Pre-release Employment Scheme (partially substantiated); and (c) Failing to keep the complainant's case in strict confidence (unsubstantiated)	Partially substantiated	2
2010/0304	(a) Impropriety in conducting vaginal search on the complainant despite her declaration of virginity (inconclusive); (b) Conducting strip search on the complainant in the presence of other inmates (inconclusive); (c) Failing to entertain the complainant's request to see a doctor (inconclusive); and (d) Delay in transferring the complainant to a hospital outside for hymen examination (unsubstantiated)	Inconclusive	2
Department of Health			
2010/0971	(a) Providing misleading information to the complainant regarding the physical status of her hymen (partially substantiated); and (b) Failing to entertain the complainant's request for hymen examination at a hospital outside (inconclusive)	Partially substantiated	1
Department of Justice			
2010/0626	Delay in handling an application for reduction of prison sentence	Unsubstantiated	1
Drainage Services Department			
2010/0508	Failing to conserve an old tree within a statutory monument	Unsubstantiated	0
2010/1845	Delay in handling a complaint about road repair works	Partially substantiated	0
2010/4011	Shirking of responsibility and failing to solve flooding problem in a village	Substantiated other than alleged	3
Equal Opportunities Commission			
2009/3496	Unreasonably terminating legal assistance to the complainant	Partially substantiated	2
Fire Services Department			
2010/5675	Failing to ensure that the columbarium at a temple complied with fire safety regulations	Unsubstantiated	0

Case No.	Complaint	Overall Conclusion	No. of Recommendations
Food and Environmental Hygiene Department			
2009/0622	Delay in handling a seepage complaint and failing to provide an investigation report to the complainant despite her repeated requests	Substantiated	3
2009/2176	Delay in handling prosecution work concerning a food complaint case	Unsubstantiated	1
2009/2412	Failing to apply for postponement of hearing with regard to a food complaint case such that the complainant's daughter was deprived of the right to testify	Substantiated	1
2009/4820	Failing to give the complainant a specific reply on completion of investigation of her food complaint	Substantiated	2
2010/1122	Mishandling a request for removing a garbage bin site outside a private estate	Unsubstantiated	0
2010/1600	(a) Failing to address properly the problem of some stall operators taking possession of the communal seating in a cooked food market (substantiated); and (b) Condoning such malpractice which stifled the complainant's business, and unreasonably refusing to compensate him for his loss (inconclusive)	Partially substantiated	3
2010/1846	Delay in handling a complaint about road repairs works.	Unsubstantiated	0
Government Secretariat – Chief Secretary for Administration's Office			
2010/1847	Delay in handling a complaint about road repairs works	Substantiated	6
Government Secretariat – Commerce and Economic Development Bureau			
2009/3954	(a) Unclear advice given by the Travel Agents Registry ("TAR") on whether the complainant had to apply for a travel agents licence and how to organise study tours legally (substantiated other than alleged); and (b) Disparity in treatment by TAR of the complainant and another organisation (unsubstantiated)	Substantiated other than alleged	3
Government Secretariat – Development Bureau			
2010/0509	Failing to conserve an old tree within a statutory monument	Unsubstantiated	0
Government Secretariat – Labour and Welfare Bureau			
2009/4463	Unreasonably refusing an application for Registration Card for People with Disabilities	Partially substantiated	6
Government Secretariat – Security Bureau			
2010/3027	Delay in notifying the complainant, an inmate, of the result of a sentence review	Substantiated	1

Case No.	Complaint	Overall Conclusion	No. of Recommendations
Highways Department			
2009/4573	Impropriety in handing over an access road on Government land to the local village representative	Substantiated other than alleged	2
2010/1848	Delay in handling a complaint about road repair works	Unsubstantiated	0
2010/4012	Shirking of responsibility and failing to solve flooding problem in a village	Unsubstantiated	0
Home Affairs Department			
2008/2653	Unreasonably supporting the holding of a scheduled owners' general meeting in an estate, resulting in unfairness to the complainants and other flat owners not notified of the meeting	Substantiated	1
2009/3554	(a) Failing to adhere to established procurement procedures; and (b) Mishandling a complaint	Substantiated	2
2009/3988	Impropriety in conducting local consultation concerning the removal of a garbage bin site outside a private estate	Unsubstantiated	0
2010/0847	(a) Misleading the complainant into signing an undertaking to withdraw its quotation for a works project; and (b) When the same project was opened for submission of quotations again, not granting the project to the complainant despite that its quotation was the lowest	Unsubstantiated	2
2010/3732	Failing to monitor the process of convening an owners' meeting for the appointment of a management committee in an estate	Unsubstantiated	0
2010/3831	Delay in handling a complaint about damaged road repair works	Unsubstantiated	0
2010/4454	Failing to consult the residents nearby before a piece of farmland and a fish pond were zoned "Industrial" land	Partially substantiated	0
2010/4896	Shirking of responsibility and failing to solve flooding problem in a village	Unsubstantiated	2
2010/5672	(a) Failing to supervise a temple properly and tolerating its illegal operation of a columbarium (b) Unreasonably refusing the complainants' request for a meeting with relevant departments	Unsubstantiated	0
Hospital Authority			
2010/0706	Failing to advise the complainant about the validity period of a referral letter and failing to address her complaint	Unsubstantiated	3
Housing Department			
2009/5416	Mishandling the refund of rental deposit and overpaid rent	Partially substantiated	4
2010/2661	Failing to handle fairly the complainant's application for public housing according to the sequence of applications	Substantiated	2

Case No.	Complaint	Overall Conclusion	No. of Recommen-dations
Land Registry			
2010/0320	(a) Failing to rectify two conflicting land registration records relating to the complainant's lot; and (b) Delay in answering the complainant's enquiry about the double registration of ownership of the lot in question.	Unsubstantiated	0
Lands Department			
2008/1771	(a) Failing to inform the complainants of the cancellation of a road project (substantiated); (b) Refusing to release the *ex gratia* payment to the complainants after cancelling their Government land licence (substantiated); and (c) Allowing a developer to illegally occupy Government land (unsubstantiated)	Substantiated	1
2008/3998	Failing to take enforcement action against illegal parking, illegal occupation of Government land and unauthorised structures	Partially substantiated	2
2009/4574	Failing to take enforcement action against illegal occupation of Government land	Unsubstantiated	1
2010/0319	(a) Failure to exercise due care in checking the land ownership records before selling by auction the complainant's lot; and (b) Delay in answering the complainant's enquiry about the double registration of ownership of the lot in question.	Unsubstantiated	0
2010/1723	Failing to consult local District Council regarding the tendering procedures for a petrol station and to resolve the traffic safety problem caused by the presence of the petrol station	Unsubstantiated	0
2010/3802	Delay in handling a complaint about road repair works	Substantiated	3
2010/5350 2010/5449 2010/5475 2010/5610 and others	Failing to take action against illegal occupation of Government land, development of illegal structures and breach of lease conditions by a temple	Unsubstantiated	0
Legal Aid Department			
2010/0701	(a) Unreasonably refusing to remove an adverse remark against the complainant; and (b) Failing to introduce procedures to govern the addition or removal of that remark	Unsubstantiated	1
Leisure and Cultural Services Department			
2009/2183	Failing to follow up the complainant's membership application for using a sports training centre	Substantiated	5
2009/3143	Lack of flexibility in the venue booking system of a roller skating rink	Substantiated	2

Case No.	Complaint	Overall Conclusion	No. of Recommen-dations
2010/0492	Improper handling of a tendering exercise for the provision of an aerial work platform	Substantiated	4
2010/0510	Failing to conserve a old tree within a statutory monument	Partially substantiated	4
2010/1675	Discrepancies in handling applications for concessionary fees in the hiring of cultural venues	Partially substantiated	3
2010/1849	Delay in handling a complaint about road repair works	Substantiated	2
Official Receiver's Office			
2010/1560	Failure to follow up properly the complainant's bankruptcy case	Partially substantiated	3
Planning Department			
2010/1367	Inappropriate planning of land use and lack of consultation, resulting in environmental nuisance to the residents nearby	Partially substantiated	0
2010/5665 2010/5668 2010/5685	Failing to take enforcement action against the development of a columbarium at a temple, which violated the specified land use under town planning requirements	Unsubstantiated	0
Post Office			
2010/2186	Mishandling a fraudulent application for mail redirection service: (a) Failing to adhere to established procedures when processing the application in question (substantiated); (b) Lax handling procedures for adding new applicant(s) to mail redirection service (substantiated); and (c) Staff being unfamiliar with the procedures of adding new applicant(s) to existing mail redirection service (inconclusive)	Substantiated	5
Social Welfare Department			
2009/4216	Unreasonably refusing to disregard part of the complainant's earnings for each of his income-earning months, resulting in unfair reduction of his Comprehensive Social Security Assistance entitlement	Substantiated	1
2010/0193	(a) Failing to obtain the authorisation of the complainant's mother and the consent of other family members before appointing one of her sons to handle her disability allowance (unsubstantiated); and (b) Delay in handling a complaint regarding misuse of disability allowance (substantiated)	Substantiated	3
2010/0631	(a) Unreasonably rejecting the complainant's application for publishing an advertisement about child adoption services (substantiated); and (b) Delay in replying to the complainant's enquiry (unsubstantiated)	Substantiated	0

Case No.	Complaint	Overall Conclusion	No. of Recommendations
Student Financial Assistance Agency			
2009/4377	Inconsistency in handling a bankrupt's applications under a financial assistance scheme	Unsubstantiated	0
2009/4669	(a) Failing to properly monitor a Continuing Education Fund course provider; and (b) Delay in handling a complaint	Unsubstantiated	2
2010/1096	(a) Delay in handling the complainant's application for course fee reimbursement under the Continuing Education Fund (substantiated); and (b) Unreasonably requesting the complainant to provide additional documentary proof for his application (partially substantiated)	Substantiated	1
Transport Department			
2009/4217	Failing to properly reply to the complainant	Substantiated	3
2010/2074	(a) Faulty arrangement in an auction of vehicle registration marks (substantiated); and (b) Negligence of auctioneer and the Department's staff in the auction process (unsubstantiated)	Partially substantiated	0
Vocational Training Council			
2010/1473	Unclear notice on eligibility for course fee reimbursement by Continuing Education Fund	Substantiated	1
2010/2037	(a) Poor attitude of an invigilator of an examination towards the complainant (unsubstantiated); (b) Interpolating the complainant's answer sheet (unsubstantiated); and (c) Unreasonably rejecting the complainant's request for viewing her answer sheet (substantiated)	Unsubstantiated	2
Water Supplies Department			
2009/1586	Unreasonably high water charges	Substantiated	0
2009/4063	Impropriety in replacing a defective water meter and recovery of unpaid water charges	Partially substantiated	6
2009/4508	Impropriety in handling a complaint about incorrect meter reading	Substantiated	4
2010/0119	Failing to properly follow up the complainant's dispute about high water charges and delay in handling his wrong meter arrangement case	Partially substantiated	4
2010/2756	Unreasonably refusing to refund the charge for water meter test	Substantiated	4



Annex 9

Summaries of Selected Cases Concluded by Full Investigation

(Where applicable, the specific aspect of maladministration established is highlighted for clearer focus at the end of the case summary)

Buildings Department ("BD")

Case No. OMB 2009/2378 – Unauthorised building works ("UBW") Allegation: delaying action on a complaint about UBW – substantiated



Details of Complaint

In August 2006, the complainant complained to BD about UBW in progress in a flat of a certain building. In May 2007, the Department confirmed the existence of a UBW item, but never took any enforcement action. Then in August 2008, BD replied that as the UBW item had been there for some time, the Department would not require its removal immediately. The complainant alleged that it was irresponsible of BD to have delayed its action.

Response from BD

2. Under the Buildings Ordinance, BD staff may enter any premises for inspection. The Department's guidelines, however, state that if entry cannot be gained after three attempts and no UBW item that warrants immediate removal is identified, action on the case would be suspended.

3. In August 2006, the complainant first complained to BD about UBW in progress in the said flat. Up to October 2008, the complainant repeatedly complained to the Department, indicating that the UBW item had extended outwards to the sky well. Staff of BD's consultant conducted several visits, but they could only observe from the outside as they were unable to gain entry into the flat. The UBW item extending to the sky well was spotted. The staff time and again left a note asking the owner/occupier of the flat to contact them for inspection. However, they did not get any response.

4. In May 2007, BD checked the records of the building. While the records showed that a smaller UBW item had existed there since 1980, it was uncertain whether the bigger UBW item spotted by the consultant's staff was a new one. In August 2008, BD decided after re-assessment that without sufficient proof of the UBW item being newly built, it could not be categorised as a "priority case" for immediate enforcement action under current policy. The Department had all along kept the complainant informed of developments.

5. In December 2008, through the complainant's arrangement, staff of the consultant entered the flat below the one in question to inspect the UBW item. They noticed some rust near the bottom of the structure but still could not tell whether it had long been there. Nevertheless, since other UBW items were found in the same building, BD decided in September 2009 to include the whole building in the Department's annual large-scale UBW removal operations. It was expected that all UBW items in the building would be demolished in 2010.

Our Comments

6. We opined that BD staff should actively follow up complaint cases and collect evidence to ascertain that the UBW items or the works in progress would not threaten the structural safety of the building before deciding to suspend enforcement action. They should not rely merely on inspection from the outside.

7. The Department had assumed a passive role in handling this case and appeared helpless when the owner/occupier of the flat refused to cooperate. BD did not check the records of the building until after receiving repeated complaints and did not manage to take a closer look at the UBW item until the complainant helped to make that possible. BD took more than three years to reach a decision to include the UBW item in a large-scale removal operation – a clear indication of its tardiness.

8. The Ombudsman, therefore, considered the complaint substantiated.

Recommendation

9. The Ombudsman recommended that BD revise its internal guidelines and instruct its staff to be more active in following up cases and collecting evidence. They should not suspend action before confirming that a UBW item is not new and is structurally safe.

A case of tardiness

Buildings Department ("BD"), Drainage Services Department ("DSD"), Development Bureau ("DEVB") and Leisure and Cultural Services Department ("LCSD")

Case Nos. OMB 2010/0507-0510 –
Tree conservation within monument site
Main allegations:
BD and DSD – failing to properly scrutinise and approve the drainage works to be carried out within the site of a privately-owned monument, resulting in the damage and removal of an old tree – unsubstantiated
DEVB – failing to properly scrutinise and approve the drainage works to be carried out within the site of a privately-owned monument and to monitor its conservation of trees, resulting in the damage and removal of an old tree – unsubstantiated
LCSD – same – partially substantiated



Details of Complaint

The complainants were dissatisfied with BD, DSD, DEVB and the Antiquities and Monuments Office ("AMO") under LCSD for failing to properly scrutinise and approve the drainage works to be carried out within the site of a privately-owned monument, to conserve the trees in the area and to assess the potential impact of the proposed works at an early stage. As a result of such failure, an old tree had to be removed after its roots were damaged by the drainage repair works.

Relevant Laws

2. As the Authority under the Antiquities and Monuments Ordinance ("the Ordinance"), the Secretary for Development may declare a building of historical interest to be a statutory monument. Under section 6(1) of the Ordinance, no person shall carry on building or other works or plant or fell trees on or in a monument except in accordance with a permit granted by DEVB.

3. The building cluster concerned was declared a monument in May 2008. DEVB granted a 12-month Block Permit to the monument holder at the time. In July 2009, DEVB renewed the Block Permit with a revised version, authorising the monument holder to conduct, among other things, "Minor Repair and Improvement Works". However, the monument holder was required to submit details and descriptions of the proposed works, the actual commencement date and the estimated completion date to AMO before the commencement of works. AMO would assess the appropriateness of the proposed works by taking into account any impact on the historic buildings and trees in the vicinity. No works should be commenced without written notification given by AMO. For "Emergency works", the monument holder was required by the Block Permit to give written notice to AMO before commencement of the works, unless it is not practicable to provide such prior notice, in which case, the written notice should be given to AMO within 48 hours of the commencement of the emergency works.

Drainage Works

4. In response to an advisory letter issued by BD in 2004, the owner of the building cluster appointed a consultant at the end of 2005 to start surveying the underground water pipes and drains in the vicinity of the nearby slopes in preparation for repair works to ensure slope safety. The project was not subject to approval by BD or DSD.

5. After the building cluster was declared a monument in 2008, a draft list of renovation works for drains and manholes was submitted by the consultant in February 2009 and the relevant letter was copied to AMO. Since the details and descriptions of a project might be revised substantially between the planning stage and its final confirmation, AMO, according to its usual practice, would not scrutinise the draft. Instead, AMO verbally reminded the monument holder on several occasions to submit the final version of the details and descriptions for approval in compliance with the Block Permit.

6. The consultant issued an email to AMO in October 2009 with which the list of renovation works was attached again. It also stated that the tendering process had already been completed in early October and the repair works were estimated to commence by the end of that year. AMO did not receive any further notice until late January 2010, when it was informed that the drainage repair works had already begun at the end of December 2009. Part of the works actually took place near the old tree and damaged its roots.

Tree Conservation

7. While planning for the above drainage works, the monument holder noticed in early 2009 that the old tree concerned was leaning to one side severely and it might endanger passers-by and vehicles. The monument holder originally intended to fell the tree in July 2009. The incident attracted public concern.

8. Consequently, DEVB made a special arrangement for AMO to hire two consultants to do the conservation work. One of them, a structural engineering company, was responsible for conducting a structural survey on the adjacent buildings and retaining walls in a bid to devise possible ways to support the tree. The other consultant, a tree expert, was engaged to assess and maintain the health of the tree for 12 months.

9. In late January 2010, after discovering that the roots of the tree had been damaged by the drainage works, the monument holder immediately instructed the contractor to suspend the works and informed AMO. AMO promptly inspected the site and verbally ordered the drainage works to stop. It also arranged for the engaged tree expert and another arborist to conduct a detailed and professional assessment of the tree.

10. After considering the remedial measures proposed by the above two specialists, the monument holder was not satisfied that the risk of trunk collapse could be fully averted. To protect public safety, the monument holder decided to carry out emergency works to fell the tree. A written notification of the decision to fell the tree was submitted to AMO in February 2010. AMO replied on the same day that it had no objection and the tree was removed two days later.

Responses from AMO and DEVB

11. Apart from tree conservation policy, DEVB is also responsible for heritage conservation policy. In formulating and implementing its policies, DEVB will balance the considerations in both aspects. It was demonstrated by the arrangements mentioned in paragraph 8 above that DEVB attached great importance to this case and had used its best endeavour in actively working with the monument holder to identify appropriate solutions for the protection of the statutory monument and the conservation of trees at the same time.

12. Regarding the monument holder's non-compliance with the Ordinance and the Block Permit in carrying out the drainage works, AMO explained that it had already reminded the monument holder repeatedly in 2009 that the repair works should only commence after submitting the details and descriptions to AMO and obtaining its written notification. After discovering the non-compliance, AMO took prompt action to follow up.

Our Observations and Comments

13. AMO had provided the monument holder with copies of the Ordinance and the Block Permit. It also asserted that verbal reminders had been given repeatedly for the monument holder to comply with the requirements. However, the monument holder might not be able to comprehend fully the technical terms used in the Block Permit. Moreover, it was unable to ascertain what were discussed between the parties during some of the follow-up visits undertaken by AMO because only simple fieldwork records were kept. In fact, the monument holder seemed unable to precisely follow the requirements under the Ordinance, as it merely took care of the trees within its site in the same manner before it was declared a monument. After this incident, the monument holder further informed AMO that it had removed 18 trees impaired by termite attack in December 2008. The fact that AMO was unaware of this all along showed inadequacy in its monitoring system.

14. Although the old tree was located within the monument boundary, it did not form part of the monument as it had no heritage value, nor was it listed in the Register of Old and Valuable Trees. It is the duty of the property owner to conserve trees within a privately-owned monument. In spite of this, AMO had made a great effort to assist the monument holder in devising methods to preserve the old tree since the intention to remove it was made known in 2009, including engaging three consultants to conduct assessments. We considered that AMO's active participation admirable.

15. Nonetheless, AMO had knowledge of all issues concerning the monument, including the actively planned drainage project, yet it failed to be an effective coordinator. While two consultants were appointed to preserve the tree in the second half of 2009, no records showed that they were clearly informed by AMO of the upcoming drainage works, nor were they provided with any project documents for reference. Had they been so informed or provided with the material, the potential risks posed by the drainage works to the tree could have been properly dealt with at an early stage. We considered that there was inadequate alertness and coordination on the part of AMO in handling monument management and tree conservation concurrently.

16. In ordinary circumstances, it was understandable that AMO did not review the draft details and descriptions of drainage works received at the initial stage. However, the drainage consultant had already indicated in its email in October 2009 that the works would commence by the end of that year. Had AMO done a preliminary review at that time, it could have easily discovered that some of the water pipes to be replaced were located in the vicinity of the old tree. It was unfortunate that AMO followed its usual practice and missed an early opportunity to prevent the roots of the tree from being damaged by the renovation works. The incident showed that it lacked sensitivity and flexibility.

17. The Historical Building Unit of AMO is responsible for scrutinising the proposed works submitted by the monument holder and following up the assessment reports submitted by the tree expert and arborist it appointed. The Technical and Advisory Unit of AMO is responsible for following up the structural survey conducted by the structural engineering company it appointed and giving technical advice to the Historical Building Unit on the proposed works submitted by the monument holder. AMO contended that the two Units would inform each other on receiving any applications or information that should be handled by the other Unit. However, in October 2009, when the Technical and Advisory Unit received the list of renovation works for drains and manholes submitted by the consultant appointed by the monument holder and learned that the repair works would probably commence by the end of that year, it did not inform the Historical Building Unit accordingly for follow up. This clearly indicated a lack of communication between the two Units.

18. In the emergency removal of the tree, the monument holder had duly submitted a written notification, and AMO, after carefully considering the professional advice of two tree experts, agreed that the decision to remove the tree urgently was justified and gave its written notification of no objection. We considered that there was no maladministration by AMO.

Conclusion and Recommendations

19. To conclude, DSD was not involved in the incident under complaint. BD only performed its function to ensure slope safety and was not involved in approving the drainage works or conserving the tree. Further, DEVB, being the Authority in granting the Block Permit, is only responsible for policy matters. AMO, under LCSD, was responsible for the daily routine duties of enforcing regulatory and policy requirements. The Ombudsman, therefore, considered the complaint against BD, DSD and DEVB unsubstantiated, while the complaint against LCSD partially substantiated.

20. The Ombudsman recommended that AMO:

(a) maintain appropriate and proper records for all follow-up works;

(b) fully explain the technical terms used in the Block Permit or illustrate by giving more examples to ensure that monument holders understand their own responsibilities;

(c) review its monitoring system to prevent monuments holders from carrying out works within monuments without notifying AMO; and

(d) enhance staff training and the communication among different units to improve the alertness, sensitivity and coordination of staff members.

21. LCSD accepted our recommendations and indicated that AMO would continue to implement the improvement measures.

A case of inadequate alertness and coordination

Buildings Department ("BD") and Food and Environmental Hygiene Department ("FEHD")

Case Nos. OMB 2009/0621-0622 – Seepage complaint
Main allegation:
BD – mishandling a seepage complaint, thereby prolonging the complainant's misery for some years – unsubstantiated
FEHD – same – substantiated



Details of Complaint

The complainant complained to the district Joint Office ("JO") set up by BD and FEHD about seepage at the ceiling and walls of her living room. After several inspections, JO identified the cause of seepage to be the waste water inlet at the flat roof area of the flat above as well as the unauthorised connection and disrepair of a communal sewage pipe of the building concerned.

2. Consequently, JO issued a Nuisance Notice to the owner of the flat above while BD issued a repair order to the Owners' Corporation ("OC") of the building. The seepage problem, however, persisted. The complainant alleged that BD and FEHD had mishandled her complaint.

JOs Established for Seepage Complaints

3. Since 2006, Government has set up JOs in various districts with staff from FEHD and BD to provide a "one-stop" service to the public for seepage complaints. The JOs have upgraded the technology of seepage tests to enhance Government efficiency in handling seepage complaints. As regards the operations and staff management of JOs, however, FEHD and BD each has its own reporting system and line of command.

Response from FEHD

4. Upon receipt of the complaint, FEHD sent its staff to the complainant's flat for investigation. Having identified the flat above as the cause of the seepage, FEHD issued a Nuisance Notice to the flat owner in accordance with established procedures. The owner, however, failed to comply with the requirements and so FEHD initiated prosecution. Later, the ownership of the flat above changed, but the seepage problem persisted. The Department of Justice ("D of J") advised that JO should issue a new Nuisance Notice to the new flat owner.

5. However, the FEHD staff concerned failed to take appropriate follow-up action. He noticed the contradictory results of two separate tests at the same seepage point but did not seek legal advice from D of J until five months later. When he realised that the service of Nuisance Notice had not been effected and there was inadequate evidence to prosecute the new flat owner, he took almost another seven months to seek further advice from D of J when this Office started an inquiry. FEHD then re-investigated the seepage case and conducted relevant tests on the advice of D of J. Based on its findings, FEHD subsequently issued a Nuisance Notice to the new flat owner.

6. In this connection, FEHD started a disciplinary investigation and was prepared to discipline the staff concerned if it was confirmed to be his fault. The staff concerned explained that he had tried his best to handle the complaint. It was only because of heavy workload and inadequate manpower that the complaint could not be properly handled.

Response from BD

7. On receipt of the referral from FEHD, BD promptly sent its staff to the flat in question for inspection and tests. When the cause of seepage was identified, BD required the flat owner concerned to arrange for the necessary repairs and also informed the complainant of the result of investigation. As regards the sewage pipe of the building, BD also followed up the complaint quickly on receipt of JO's referral. Afterwards, BD identified the drainage tank at the flat roof of the flat above, the common sewage pipe connected beneath it and the floor slabs surrounding the drainage tank as the sources of seepage at the ceiling of the complainant's flat.

8. Based on the above findings, BD issued a repair order to OC. After OC had replaced the damaged drainage tank and sewage pipe, BD conducted several site inspections to run tests and also visited the complainant's flat. As there was no sign of continued seepage, BD revoked the repair order for the sewage pipe.

9. The complainant later informed BD that the seepage problem persisted and queried BD's decision to revoke the repair order. BD explained to the complainant why the repair order had been revoked and that persistent seepage at the ceiling was indeed due to the failure of the owner of the flat above to make the repairs. BD then urged JO to conduct a follow-up investigation. In addition, BD issued another repair order, requiring OC to repair all damage and defects of the communal areas and sewage pipes of the building.

Our Observations and Comments

10. As the seepage problem remained unresolved and it involved sewage discharge and serious hygienic nuisance, we requested FEHD and BD to conduct a joint inspection at the complainant's flat to work out a solution.

11. After the joint inspection, FEHD informed the complainant that the owner of the flat above had failed to comply with the Nuisance Notice and prosecution would be brought against that owner. FEHD, therefore, would not take any new follow-up action at that stage. BD, on the other hand, said it had urged OC to start the repairs as soon as possible.

12. In view of the complaint handling process of FEHD and BD, we considered that JO had followed established procedures in pursuing the case at the initial stage and its follow-up action was fairly satisfactory.

13. Later, however, there was obviously delay on the part of FEHD. It was reasonable for FEHD to consult D of J to determine whether it should prosecute the owner of the flat above for non-compliance with the Nuisance Notice, considering the contradictory results of two separate tests. Yet, the FEHD staff concerned had delayed the consultation with D of J for five months without reviewing the results or conducting any other tests. We considered it unacceptable that on receipt of D

of J's reply, he delayed another seven months before reverting to D of J for further consultation and took no follow-up action.

14. Moreover, it should not be something unique to this case that a change of property ownership was involved. JO should have come across the same situation in dealing with other seepage complaints. Nevertheless, JO's current guidelines had no mention of how such cases should be handled and frontline officers had to consult D of J further, thereby affecting the progress in complaint handling.

Conclusion

FEHD

15. FEHD put the blame of the delay in handling the seepage complaint on an individual staff member and initiated a disciplinary investigation. However, according to the comments by the staff member, FEHD had a shortage of staff and there was ineffective internal management. If what he said was true, the oversight and delay revealed in this case might only be the tip of an iceberg. It showed that FEHD had not examined the root of the problem exposed by this case.

16. The Ombudsman considered the complaint against FEHD substantiated.

BD

17. BD had performed its duty to monitor the damage and disrepair of the building's common sewage pipe and it had issued the repair order and checked the repair works. The complainant alleged that BD had failed to monitor the repair works by OC properly, thereby allowing the seepage to persist. We noticed that the owner of the flat above had not complied with the Nuisance Notice to carry out the repairs, while the investigation afterwards stagnated because of the negligence of FEHD staff. As a matter of fact, BD had conducted an inspection before revocation of its repair order and it had received no further referral from JO. As such, there was no evidence to prove that the persisting seepage problem at the complainant's flat was a result of BD's failure to follow up the case properly.

18. Based on the above, The Ombudsman considered the complaint against BD unsubstantiated.

Recommendations

19. The Ombudsman made the following recommendations:

For FEHD

(a) to review the existing work flow for staff attached to JO and strengthen the internal monitoring of progress in complaint handling;

(b) to conduct a comprehensive review of the existing handling procedures and clarify legal issues concerning follow-up work for seepage complaints that involved a change of property ownership as well as setting up relevant guidelines for staff;

(c) to ensure that the Nuisance Notice would be delivered according to the law so that prosecution would not be affected by procedural errors in future; and

For BD and FEHD

(d) to learn from this case and, apart from performing their own duties, consider getting the Home Affairs Department ("HAD") involved when dealing with similar seepage complaints in future so that HAD could help to promote building management and assist the owners to tackle their problems and achieve early building repairs.

A case of delay and lack of consideration

Correctional Services Department ("CSD")

Case No. OMB 2008/4834 – Prisoner's diary
Main allegation: unreasonably forbidding the complainant to take away his diary when released from prison – inconclusive



Details of Complaint

The complainant was an inmate in a CSD institution. On the day of his release, he wanted to take with him the English diary that he had written during incarceration. However, that was refused by an officer, who considered two pages of his diary to contain sensitive information. The complainant was allowed to keep the rest of the diary, only after he had destroyed, as demanded, those two pages.

2. The complainant found the officer's refusal unreasonable as it is a right of inmates to write diaries.

Response from CSD

3. The officer recalled that he had, on that day, indicated to the complainant that written notes to be taken away by inmates when released from prison must be security-checked. While the diary was mainly in Chinese, there were two pages containing English letters and other indecipherable symbols, the meaning of which the complainant refused to explain. Later, another officer told the complainant that the use of symbols and codes was not allowed in inmates' notes. The complainant then agreed to destroy those two pages of his diary.

4. CSD stated that they do not forbid inmates to write diaries. Restrictions on the use of notebooks are explained to all new inmates during induction. The Prison Rules also stipulate that all letters to or from an inmate must not contain any message expressed in code. This is to prevent illegal acts such as plotting to escape which may threaten the security and discipline of the institution. Notes written in codes and symbols are similar in nature to letters containing codes. CSD, therefore, considered the procedures for restricting inmates' use of notebooks to have a legal basis.

5. If an inmate's notes contain shorthand symbols or codes for which he/she fails to give a reasonable explanation, the management of the institution can confiscate the whole notebook or tear away the parts in question before returning the rest to the inmate. The officer in this case had handled the matter in accordance with the established procedures.

Our Comments

6. The Hong Kong Bill of Rights Ordinance stipulates that "everyone shall have the right to freedom of expression". Restrictions by CSD on the content of inmates' notes for security reasons, while understandable, must be fully justified and implemented carefully.

7. The complainant alleged that his diary was written in English and contained no symbols or codes. He presented to this Office a copy of the remaining part of his diary and managed to reproduce from memory part of the two pages destroyed. It was written in English and contained no symbols or codes. We asked CSD to comment. In response, CSD stated that the two pages recorded certain misbehaviour of inmates in the institution. The officer concerned maintained that the content of the reproduced pages was different from the destroyed version and that the diary was mainly in Chinese.

8. We considered that an account of the misbehaviour of some inmates in the two pages would not necessarily pose any substantive threat to the security and discipline of the institution. It appeared that CSD had over-reacted in this case and might even have violated the Hong Kong Bill of Rights Ordinance (paragraph 6).

Conclusion

9. As the remaining part of the diary as presented by the complainant was written in English (rather than in Chinese) and he could reproduce from memory part of the destroyed pages, his version of the event was more convincing than that of the CSD officer (paragraph 3). Nonetheless, as those two pages had already been destroyed, the facts could not be fully established. The Ombudsman, therefore, considered the complaint inconclusive.

10. Notwithstanding the above, this case revealed the following problems in CSD's system and practice:

(a) Details about restrictions on the use of notebooks, which CSD claimed to have explained in induction for inmates, were not released to the inmates in written form (such as handouts or notices). Neither was the information displayed in a place accessible to inmates (such as the library of the institution) to ensure their awareness of the restrictions. It was, therefore, questionable whether CSD staff had an adequate legal basis for their enforcement.

(b) In accordance with the principle of the Prison Rules, when the management of the institution confiscates notes that contain symbols or codes, it should file them in the inmate's penal records for future examination. The officer in this case should have similarly filed the two pages of the complainant's diary instead of asking him to destroy them.

Recommendation

11. The Ombudsman urged CSD to examine the problems identified above for improvement. CSD accepted this recommendation.

A case of inadequate legal basis in system and practice

Efficiency Unit ("EU"), Lands Department ("Lands D"), Leisure and Cultural Services Department ("LCSD"), Drainage Services Department ("DSD"), Home Affairs Department ("HAD"), Highways Department ("Hy D") and Food and Environmental Hygiene Department ("FEHD")



Case Nos. OMB 2010/1845-9, 2010/3802, 2010/3831 –
Road repair works

Allegation: EU, Lands D and LCSD – delay in handling a complaint about road repair works – substantiated
DSD – same – partially substantiated
HAD, Hy D and FEHD – same – unsubstantiated

Details of Complaint

The complainant lodged a complaint with the 1823 Call Centre ("Call Centre") under EU about waterlogging at some sunken surface of a footpath leading to a playground ("the Footpath"). The case was subsequently referred to Lands D, LCSD, DSD, HAD, Hy D and FEHD for follow-up action. The problem dragged on for several months but none of the departments was willing to take up the repairs responsibility.

The Events

2. In February 2010, the complainant complained to DSD about waterlogging on the Footpath. DSD staff conducted a site inspection and identified the sunken surface on the Footpath to be the source of trouble. Since it was not a drainage problem, DSD referred the complaint to Hy D and HAD. Both departments later responded and denied repairs responsibility. DSD then referred the case to Lands D.

3. In April 2010, the complainant lodged the same complaint with the Call Centre. The Call Centre first referred the case to Hy D and then Lands D, HAD and LCSD for follow-up action. Since none of the departments came forward to take up the repairs responsibility in May and June, the Call Centre requested the complaints officers of the departments concerned to intervene and handle the case. Finally, Lands D pointed out to LCSD the land grant provisions of the playground, which stipulated that the latter should be responsible for the repairs of the Footpath. In August, LCSD completed the repair works.

Responses from Departments and Our Comments

EU

4. The Call Centre noted that its staff had followed the internal guidelines and considered the information provided by the complainant. Since none of the departments accepted the responsibility, the Call Centre requested the management of the departments concerned to intervene and handle the case. Meanwhile, the Complaint Handling Team of the Call Centre conducted case analysis and collation and worked with the departments concerned. So, the Call Centre had been proactive in referring the case, monitoring its progress as well as escalating it to the management level of departments.

5. Nevertheless, our investigation discovered that staff of the Call Centre had assigned different file numbers to the same complaint by the complainant and made multiple internal referrals without knowing that the case had already been escalated to the management of the departments concerned. The staff members had merely made guesses on which department should be responsible based on information provided by the complainant. Moreover, the Complaint Handling Team had failed to discharge its function of collating and analysing cases for efficient resolution of complicated or cross-departmental complaints. As such, we considered the complaint against EU substantiated.

Lands D

6. Lands D indicated that it had received another complaint of flooding at the same location in March 2009. Having re-examined the land grant documents concerning the playground, Lands D confirmed that it was LCSD's responsibility to repair and so referred the case to the latter for follow-up action. Lands D received no response from LCSD, but its staff conducted two site visits in October 2009 and March 2010 and found no flooding on the Footpath. It assumed that LCSD had fixed the problem and so closed the file. On receipt of the complainant's case in April 2010, Lands D had been cooperating with the Call Centre in identifying the responsible department. As the Lands D staff concerned was not the one who handled the complaint received in 2009, he was not aware that LCSD was responsible for the repairs. Thus, the staff concerned suggested that the Call Centre refer the case to HAD and Hy D.

7. We considered Lands D to have hastily closed the case as its site inspections in 2009 and 2010 should not be able to confirm whether LCSD had completed the repair works at that time. Moreover, upon receipt of the complaint in 2010, the Lands D staff had not carefully examined the material on file and overlooked the relevant land allocation information therein. As a result, the staff had not asked LCSD to follow up the complaint but suggested the Call Centre to refer the matter to Hy D and HAD, which had earlier already expressed that they were not responsible. This had reinforced the impression of shirking of responsibilities among departments. Overall, we considered Lands D to have acted perfunctorily in handling the present case and that the complaint against Lands D was substantiated.

LCSD

8. LCSD explained that upon receipt of Lands D's referral in 2009, it had sent a memorandum to Lands D in June to seek further information to confirm whether the Footpath was within the perimeter of the land granted for the playground. However, it had received no reply from Lands D and its staff had not followed up the case due to heavy workload. Besides, its staff had had inadequate understanding and knowledge of the land grant provisions and failed to thoroughly check the land grant records. The staff had wrongly believed that the Footpath was outside the purview of LCSD because it was not included in the allocation plan of the playground. That had resulted in delay in the repairs of the Footpath.

9. We found that apart from its misunderstanding of the land grant provisions, LCSD had failed to consider the interests of the playground users or followed up with the referral from Lands D in 2009. The complaint against LCSD was, therefore, substantiated.

DSD

10. DSD had followed the procedures and guidelines for handling cross-departmental complaints in identifying the department responsible for the repairs. It had also offered to take up urgent repairs of the Footpath.

11. We considered that DSD should be commended for having offered to take up the repairs of the Footpath. Nevertheless, its staff had inadvertently set the complainant's case aside and failed to promptly follow up. The complaint against DSD was, therefore, partially substantiated.

HAD

12. To avoid duplication of work and wasting of resources, HAD had established guidelines not to provide services that should be provided by other Government departments. HAD had thus acted properly in referring the case to LCSD.

13. We found a lack of initiative and proactiveness on the part of HAD in resolving district problems. However, it should not bear substantive responsibility for the delay in repairs of the Footpath. The complaint against HAD was, therefore, unsubstantiated.

Hy D

14. Hy D had conducted two site inspections and found the repairs of the Footpath not within its purview. It had clarified the situation with the Call Centre and provided information.

15. We considered the Hy D staff to have acted prudently in conducting two site inspections and the Department to have followed established procedures and guidelines when pursuing the complaint. The complaint against Hy D was, therefore, unsubstantiated.

FEHD

16. FEHD staff had followed established guidelines in handling complaints. On receipt of referrals from the Call Centre, FEHD had conducted site inspections and cleared the pools of water. It had also promptly informed the complainant of the findings and taken follow-up action.

17. We considered FEHD to have performed its duties and followed established procedures in clearing the pools of water on the Footpath. As such, the complaint against FEHD was unsubstantiated.

Recommendations

18. The Ombudsman made the following recommendations to EU, Lands D and LCSD:

For the Call Centre

(a) review and improve its complaint handling procedures and system of complaint information keeping to ensure that staff could promptly identify previously received calls and related complaints;

(b) check with callers to ensure repeated complaints are identified early and avoid giving multiple file numbers for the same case;

(c) update staff on any new information and latest development whenever a case is escalated to the management level for handling;

(d) enhance staff's skills in handling cross-departmental complaints;

(e) review its internal referral mechanism to avoid misleading the public and to save them the trouble of repeating the same facts;

(f) improve the workflow of the Complaint Handling Team in the collation of related cases;

For Lands D

(g) assist LCSD in gathering information on the land grant provisions and plans of gazetted recreation venues;

(h) review and enhance the current file management system and procedures to enable more efficient use of file records by staff;

(i) strengthen staff training to cultivate proactiveness and prudence among staff in handling complaints;

For LCSD

(j) conduct regular reviews on the improvement measures implemented in response to this complaint, including checking the information on the land grant provisions and plans of recreation venues, strengthening staff supervision and setting up of a database for records of allocated lands; and

(k) continue to seek assistance from Lands D in the gathering of information on land grant provisions and plans for gazetted recreation venues.

Equal Opportunities Commission (“EOC”)

Case No. OMB 2009/3496 – Legal assistance
Allegation: unreasonably terminating legal assistance to the complainant – partially substantiated



Details of Complaint

The complainant, a public officer, considered his department to have discriminated against him on account of his marital status. The department had refused to grant him overnight on-call allowance because he was single. He complained to EOC and applied for its legal assistance to seek the department’s admission of unfairness in its policy, change of the policy and nominal monetary compensation to him.

2. The department subsequently changed its policy on granting of the allowance, thereby eliminating the alleged discrimination. EOC believed that the “policy objective” of the requested legal assistance had thereby been achieved. The Commission terminated its legal assistance to the complainant. He found EOC’s decision unreasonable, as the Commission had not followed up on his demands that the department admit its fault and pay him compensation.

Response from EOC

3. The Legal Service Division (“LSD”) of EOC had circulated a paper on the complainant’s application for legal assistance to the Commission’s Legal and Complaints Committee (“LCC”) for consideration. LCC approved the complainant’s application with the “policy objective” of motivating the department concerned to implement a new policy so as to eliminate the discrimination promptly.

4. According to the “Agreement of Legal Assistance” signed by the complainant, EOC had the discretion to change its mode of assistance or even terminate its assistance on reasonable grounds. EOC staff had also made it clear at a meeting with the complainant that EOC would consider instituting legal proceedings on his behalf only if his department failed to implement the new policy within a reasonable time.

5. The department subsequently implemented its new policy. Instead of continuing to demand the department to admit its fault, the complainant sought substantive monetary compensation from the department. EOC suggested an amount for his claim. However, the Commission also explained to him that the decision whether EOC would institute legal proceedings on his behalf rested with LCC. Eventually, LCC decided to terminate the legal assistance to the complainant on the grounds that the “policy objective” had already been achieved, that the department’s policy was not directed against individuals and that the complainant could seek compensation through other avenues.

Our Comments

6. When the complainant applied for EOC’s legal assistance, he not only sought a policy change but also wanted the department to admit its fault and give him compensation. Though the initial amount claimed was nominal, his intention to seek

compensation was obvious. LSD's paper to LCC did mention the complainant's three demands. However, its focus was only on his expectation that the policy be changed. We considered that EOC had not taken his two other demands seriously.

7. EOC argued that it had verbally explained to the complainant the "policy objective" set by LCC. Nevertheless, while knowing that the complainant had asked for compensation, which was not covered in the "policy objective", EOC had never made this clear to the complainant in writing. This amounted to maladministration.

8. We noted that when the complainant subsequently sought substantive monetary compensation, LSD provided legal advice to him and even represented him in an attempt to seek compensation from the department. LSD then passed the case to LCC to decide whether EOC should institute legal proceedings on the complainant's behalf. This could be regarded as a remedy for not having handled his other two demands seriously. It was after thorough consideration that LCC decided to terminate the legal assistance. There was no impropriety from an administrative perspective.

9. In this light, The Ombudsman considered the complaint partially substantiated.

Recommendations

10. The Ombudsman recommended that EOC:

(a) make sure that in discussion and circulation papers, comments and recommendations are made on all demands of the applicant for thorough consideration by LCC; and

(b) inform applicants of the objective and scope of legal assistance in writing clearly, as soon as these are determined by LCC, to avoid any misunderstanding and disputes.

A case of lack of thoroughness

Food and Environmental Hygiene Department ("FEHD")

Case No. OMB 2009/2412 – Prosecution work
Main allegation: being insensitive to the situation of the complainant's daughter and failing to apply for postponement of a court hearing about a food complaint case, resulting in her inability to testify in court – substantiated



Clash of Dates

In June 2008, the complainant's daughter found a dead rodent in a lunch box she had bought from a fast food shop near her school. The school reported this to FEHD on her behalf. After investigation, the Department decided to institute prosecution against the fast food shop. However, the complainant's daughter had a public examination on the day scheduled for hearing of the case and would, therefore, be unable to appear in court to give evidence.

Postponement of Hearing Requested

2. In April 2009, the complainant's daughter asked over the telephone for postponement of the hearing. The FEHD health inspector who contacted her ("Inspector A") told her to provide a written statement with documentary proof so that he could apply to the court for a postponement. In May, Inspector A called the complainant, saying that there appeared no actual clash between the hearing and her daughter's examination and so her need to attend the examination was not a valid reason for not testifying. Upon his advice, the complainant's daughter submitted a statement indicating that in order to focus on her examination, she would rather not attend the court hearing to give evidence.

Decision to Offer No Evidence

3. Upon receipt of the statement, Inspector A called the complainant several times, asking her whether her daughter would indeed not testify in court. He further indicated that her daughter might be prosecuted if she failed to appear in court to testify. In the end, FEHD did not apply for a postponement of the hearing. Moreover, it decided to offer no evidence against the owner of the fast food shop. Consequently, the complainant's daughter was unable to testify in the case, and was even alleged to be dodging the duty to appear in court to give evidence. The complainant considered that FEHD was insensitive to her daughter's situation and had mishandled the case.

Response from FEHD

4. The complainant's daughter initially agreed to give evidence in court when Inspector A took a statement from her upon receipt of the food complaint. Later on, in April 2009, she informed him that she would not be able to do so because of a public examination and requested a postponement. However, she only provided a statement but not the documentary proof required. Inspector A later learned through her school that the examination would only start at 6 pm. Since the hearing was to be held in the morning, he considered that there was no clash of time. He asked the complainant's daughter again in May to clarify her intention. The complainant's daughter then decided not to give evidence in court, but verbally asked him again to apply for a postponement of the hearing. Nevertheless, in the written statement to FEHD afterwards, she just said that she was unwilling to testify in court and did not ask for re-scheduling of the hearing. As the complainant's daughter was a key witness, a conviction would be unlikely without her. FEHD, therefore, decided to offer no evidence against the defendant and the case was closed.

5. Inspector A denied having commented on whether the need to attend the examination was a valid reason for absence from court. Neither had he asked the complainant's daughter to give a misleading statement. Since she had once agreed to testify in court, it was correct for him to seek clarification of her intention and alert her of possible consequences of unjustified absence.

6. FEHD considered the staff to have complied with established procedures and guidelines and handled the case properly, although they might need to pay more attention to their communication skills in dealing with the public.

Our Comments

7. Although the complainant's daughter did not make a written request for postponement, she did write down in her April 2009 statement that she was "willing to appear in court to testify". She could not do so only because of the examination. Moreover, she had also verbally asked Inspector A in April and May to apply for re-scheduling of the hearing. Her intention to testify could not have been clearer. As a matter of fact, a written explanation by the witness concerned is not required for such applications. The onus of making such applications to the court actually is on FEHD. Inspector A's decision to offer no evidence upon receipt of her statement in May gave an impression that he was unhelpful and he only wanted to wrap up the case quickly. It also cast doubt on the Department's determination to institute prosecution.

8. To ask a student to testify in court on examination day before taking an examination would indeed create psychological pressure on the candidate. It was inconsiderate and unreasonable of Inspector A to think that the complainant's daughter could give evidence in court before her examination just because there was no time clash between them.

Conclusion and Recommendations

9. Overall, FEHD failed to discharge its prosecution duty conscientiously and showed little consideration for the complainant's daughter. The Ombudsman, therefore, considered the complaint substantiated.

10. The Ombudsman recommended that, besides improving the communication skills of its staff, FEHD should step up training for them to understand better their role as law enforcers. They should duly consider the interests of and give proper assistance to all parties concerned when carrying out their duties.

A case of lack of positive action and being inconsiderate

Food and Environmental Hygiene Department ("FEHD")

Case No. OMB 2009/4820 – Food complaint
Allegation: failing to give the complainant a specific reply on completion of investigation of her food complaint – substantiated



Details of Complaint

The complainant reported to FEHD that a can of luncheon meat which she had bought from a supermarket contained some unidentified black substances. Suspecting that the food was unhygienic and unfit for consumption, she asked the Department to follow up.

2. The Centre for Food Safety ("CFS") under FEHD sent her a reply afterwards, stating that "the black substances were two lumps of black matter … with protein, which was the main component of the food". However, CFS did not confirm whether the luncheon meat was hygienic and fit for consumption.

Response from FEHD

3. FEHD explained to this Office that the complainant had not raised doubts, when reporting the case, that the luncheon meat was unhygienic and unfit for consumption.

4. FEHD had sent the food specimen provided by the complainant to the Government Laboratory for analysis of foreign substances. The test report confirmed that the black substances contained protein, which was the main component of the luncheon meat. CFS then wrote to inform her of the test result.

Our Comments

5. As to whether the complainant had told FEHD staff her suspicion that the luncheon meat was unhygienic and unfit for consumption when she reported the case, the complainant and FEHD held different versions. In the absence of independent corroborative evidence, we could not comment.

6. Nevertheless, when members of the public report a food complaint case to FEHD, it goes without saying that the Department is expected to state after investigation whether the food is safe for consumption.

7. In this case, FEHD argued that the complainant had not queried whether the luncheon meat was unfit for consumption. Consequently, FEHD only told her that both the black substances and the luncheon meat contained protein, without confirming whether the black substances were foreign matters and whether the luncheon meat was fit for consumption. FEHD had indeed handled her complaint carelessly.

8. Moreover, as regards whether the luncheon meat was fit for consumption, it was only after our intervention that CFS conducted other tests to arrive at a comprehensive conclusion. Obviously, there was inadequacy in its initial analysis of the food specimen for foreign substances.

9. Against this background, The Ombudsman considered the complaint substantiated.

Recommendations

10. FEHD accepted our recommendations to:

(a) review the aim and scope of tests for food complaint cases involving alleged foreign substances; and

(b) give specific replies to complainants about food safety on completion of food specimen tests.

A case of carelessness and failure to address public concerns

Food and Environmental Hygiene Department ("FEHD")

Case No. OMB 2010/1600 – Cooked food market

Allegations: (a) failing to address properly the problem of some stall operators taking possession of the communal seating in a cooked food market – substantiated; and (b) condoning such malpractice which stifled the complainant's business, and unreasonably refusing to compensate him for his loss – inconclusive



Details of Complaint

In November 2008, the complainant rented a stall in a cooked food market ("the Market") under FEHD. Shortly afterwards, he complained to FEHD that other stall operators had taken possession of the communal seating in the Market, leaving only one table for his customers. His complaint was, however, not properly handled by the Department and the problem remained. He alleged that FEHD had condoned such behaviour and he eventually had to close his business at the end of January 2009. He sought compensation from FEHD but was unreasonably refused.

Response from FEHD

2. Since 2000, FEHD has been providing communal seating in its new cooked food markets.

3. In the Market, there were 13 stalls. FEHD had informed all stall operators of the communal seating arrangement when they signed the tenancy agreement. Moreover, the Department had told them not to place any articles outside the boundary of their stalls. Between mid-2008 and mid-2010, the management of the Market was outsourced to a contractor, whose performance was monitored by FEHD.

4. In mid-November 2008, the complainant complained to the contractor that other stall operators had taken possession of the communal seating. The contractor told him that notices had been posted in the Market to remind stall operators of the communal seating arrangement.

5. At the end of December 2008, the complainant notified FEHD that he had decided to close his business and terminate his tenancy at the end of January 2009. Meanwhile, in response to a similar complaint that he had lodged with the media, FEHD and the contractor took a number of follow-up measures, such as distributing and posting notices in the Market and stepping up inspections.

6. Since February 2009 (i.e. after termination of the tenancy), the complainant had complained to the Chief Executive's Office repeatedly, alleging that FEHD had mishandled the problem of stall operators taking possession of the communal seating. He demanded the Department to refund him his rent as compensation. Between March and June, FEHD and the contractor conducted a number of inspections in the Market and found that some stall operators had placed articles on communal chairs and in common areas. The contractor subsequently issued verbal warnings to those operators and again posted notices. Further surprise inspections did not reveal similar problems.

7. After our investigation commenced, a Senior Health Inspector of FEHD conducted an inspection in the Market in June 2010. He found a stall operator occupying a communal table for display of food. Moreover, tables and chairs had been set up in a vacant stall. The Senior Health Inspector issued verbal warning to the operators concerned on the spot and directed the contractor to follow up.

8. FEHD explained that stall operators could "coordinate among themselves" regarding the use of the communal seating to suit their businesses and customers. FEHD would take immediate action if there were complaints about stall operators taking possession of the communal seating.

9. FEHD rejected the complainant's claim for compensation on the grounds that he had already used the stall and he had been apprised of the communal seating arrangement when he signed the tenancy agreement.

Our Findings

10. Our investigators visited the Market thrice during peak hours in May, August and November 2010 and found the following evidence:

(a) Stall operators placed their own crockery, cutlery and menus on the communal tables in front of their stalls. They indicated to potential customers that those tables were exclusively for their own customers.

(b) A stall operator displayed food on the communal tables in front of his stall.

(c) Another stall operator had laid tablecloths and placed crockery and cutlery on some communal tables.

Our Comments

11. On the one hand, FEHD had made it loud and clear that the Market runs a communal seating system. On the other hand, the Department allowed stall operators to "coordinate among themselves" regarding the use of the communal seating (paragraph 8). This indicated that the Department was clearly indecisive and ambivalent about seating arrangement in cooked food markets.

12. Our inspections confirmed that some stall operators in the Market had taken possession of the communal seating and this might well have become a customary practice. Communal seating arrangement in the Market existed in name only and yet staff of FEHD and the contractor were all along "unaware" of the abuse. This incident revealed that FEHD had been relying too much on the contractor and failed to discharge its own management responsibility.

13. In the light of the above, The Ombudsman considered allegation (a) substantiated.

14. The premature closure of the complainant's business could be due to various factors. We could not ascertain whether it had been caused by FEHD's mismanagement of the Market. The Ombudsman, therefore, considered allegation (b) inconclusive.

Overall Conclusion and Recommendations

15. Overall, the complaint was partially substantiated.

16. The Ombudsman urged FEHD:

(a) to conduct a comprehensive review of the communal seating arrangement in cooked food markets; and

(b) to instruct its management staff to monitor closely the work of frontline inspection staff and step up investigation and enforcement action.

A case of negligence and lax enforcement

Home Affairs Department ("HAD")

Case No. OMB 2008/2653 – Building Management Ordinance
Allegation: unreasonably supporting the holding of a general meeting of owners of a building estate as scheduled, constituting unfairness to the complainant and those owners not having been sufficiently notified – substantiated



Details of Complaint

The complainant, Ms A, used to be the chairperson of the management committee of the owners' corporation ("OC") of an estate. During her term of office, the OC scheduled a general meeting for 9 May 2008. However, she noticed in early May that the estate management company had failed to give notice of the meeting to all owners and tenant representatives at least 14 days before the date of the meeting under section 2(1) of Schedule 3 to the Building Management Ordinance ("the Ordinance").

2. Ms A, therefore, called the local District Office ("DO") under HAD to enquire whether the OC should hold the meeting as scheduled. Ms B of DO suggested that Ms A seek legal advice.

3. Having obtained legal advice, Ms A decided to cancel the meeting on 9 May and so informed DO. However, DO staff still supported and attended a meeting held by the estate management company and some of the owners on 9 May. Ms A considered that DO had unreasonably supported the holding of the meeting as scheduled, which was unfair to her as well as those owners who had not been sufficiently notified of the meeting.

Our Findings

4. On 6 May 2008, Ms A asked Ms B whether the OC should hold the meeting as scheduled. Besides advising the OC to seek legal advice, Ms B in fact also explained to Ms A section 37 of the Ordinance: "a resolution passed at any meeting convened under this Ordinance shall not be invalid by reason only of the omission to give notice of the meeting to any person entitled to such notice".

5. Obviously, Ms B thought that under section 37 of the Ordinance, the OC could still hold the meeting even if it had failed to comply with section 2(1) of Schedule 3 to the Ordinance, i.e. it did not matter if the estate management company had failed to give notice to each owner and tenant representative at least 14 days before the date of the meeting.

6. This Office asked HAD whether it had sought legal advice on its interpretation. HAD replied in the negative and said that section 37 of the Ordinance was self-explanatory.

7. We consider DO to have misinterpreted section 37. That section is meant to safeguard resolutions passed at an owners' meeting already held in compliance with the Ordinance from being challenged by individual owners or affected by any unforeseen circumstances. However, if violation of the stipulation on giving notice of meeting is found before the meeting is held, the OC should convene the meeting again in accordance with the stipulation.

8. Overall, DO had no legal justification to come to the view that the OC could hold the meeting as scheduled while knowing that some of the owners had not received the notice of meeting 14 days before the date of the meeting. Its decision to support the meeting was unfair to those owners.

9. In this light, The Ombudsman considered the complaint substantiated.

Recommendation

10. The Ombudsman urged HAD to consult the Department of Justice on the correct interpretation of the Ordinance, so as to enable staff to offer proper advice on matters relating to the operation of owners' corporations.

A case of misinterpretation of law

Home Affairs Department ("HAD")

Case No. OMB 2009/3554 – Procurement procedures
Main allegation: failing to follow established procurement procedures, thereby causing loss to the complainant – substantiated



Details of Complaint

A District Office ("DO") under HAD intended to purchase some uniforms and asked for quotations from the complainant, who had previous business dealings with the Office. At the request of DO, the complainant prepared samples and sent two documents to DO. DO staff signed the documents.

2. Later, however, DO suddenly stopped the order and stated that it had never actually placed an order for the uniforms. It refused to pay for the whole batch and agreed only to pay for the samples. The complainant alleged that DO had failed to follow the established procurement procedures, thereby causing him to suffer a loss.

Response from HAD

3. HAD was of the view that DO had never started the procurement process. It had merely instructed its Office Assistant ("OA") to obtain samples from the complainant and had never commissioned the complainant to produce the whole batch of uniforms. The OA had signed and affixed the Office chop to the two documents simply to acknowledge receipt of them, not to confirm the purchase order.

4. Nevertheless, HAD admitted there was inadequacy in the handling of this case by DO. DO had failed to make it clear to the complainant that it wanted only samples. Neither had it filed the relevant documents. In response to this complaint, DO had urged its staff to keep proper record of all correspondence. New guidelines had also been drawn up to instruct OAs to use only an "acknowledge receipt" chop and prohibit them from using the Office chop when acknowledging receipt of documents.

Our Comments

5. In this case, DO had contravened the regulations and guidelines for procurement established by Government and HAD when it allowed an OA, whose rank was lower than those authorised, to handle procurement matters and negotiate with the supplier without proper supervision. This amounted to maladministration. Moreover, when DO previously ordered uniforms from the complainant, the process was not much different. Naturally, the complainant would believe that DO had confirmed the purchase order in this case.

6. Despite numerous contacts with the complainant, the staff concerned had never made it clear that DO was ordering only samples. Subsequently, when the complainant asked for payment from DO, the DO staff, without bothering to seek clarification, agreed to pay. It was not until later that they became aware of the misunderstanding.

7. In this light, The Ombudsman considered the complaint substantiated.

Recommendation

8. We recommended that HAD direct DO to strictly adhere to the regulations and guidelines for procurement established by Government and HAD.

Hospital Authority ("HA")

Case No. OMB 2010/0706 – Referral letter
Main allegation: failing to a lert the complainant of the validity period of a referral letter by a certain hospital, and failing to address her complaint against a Patient Relations Officer – unsubstantiated



Details of Complaint

In late December 2008, the complainant was issued a referral letter by a doctor at an HA hospital ("Hospital A"). She took the letter to make an appointment with the Medicine Department of that hospital and was given a consultation date in mid-August 2009.

2. In March 2009, the complainant moved to another district. In May 2009, she took the referral letter with her to a hospital in that district ("Hospital B"), hoping to book another appointment for consultation. However, a staff member at Hospital B said it could not be arranged because the validity period of that letter had expired. The complainant was dissatisfied that Hospital A had not alerted her that there was a validity period of the letter. She approached the Patient Relations Officer ("PRO") of Hospital B for help but the officer "instigated" her to complain against Hospital A. Consequently, she lodged a complaint with the Public Complaints Committee ("PCC") of HA. However, PCC's reply simply dismissed the incident as "miscommunication" and failed to address her complaint directly.

Response from HA

Validity Period of Referral Letters

3. Referral letters carry information about the patient's medical condition. Specialist out-patient clinics set a validity period on such letters to make sure that patients would make a consultation appointment with the clinic concerned without delay. Staff at the specialist out-patient clinic would arrange an appropriate consultation date with reference to the patient's condition according to the triage system of the clinic. Since the demand for the same specialist service, and hence the waiting time for consultation, vary from hospital to hospital, validity periods of referral letters also differ from one clinic to another, depending on the resources available to the clinic. Thus, it is better for patients to enquire in advance with the specialist clinic of the hospital in question.

4. The validity period of referral letters set by the Department of Medicine of Hospital B is four months. Hospital A issued the letter to the complainant in December 2008. When the complainant presented it to Hospital B in May 2009 for booking a consultation, it had already expired and an appointment could not be made as a result.

Patient Relations Officer

5. Judging from the recorded conversation between the complainant and the PRO, the latter had not "instigated" the complainant to complain against Hospital A. She merely asked her to contact Hospital A for clarification. This was also explained to the complainant in PCC's written reply.

Our Observations and Comments

6. Imposing a validity period on referral letters can cater for the situation where the patient's condition has changed and allow HA to deploy its resources more effectively and make adjustment to meet the demand for services in its hospitals. The arrangement is, therefore, reasonable. Of course, an early alert from Hospital A would have saved the complainant the wasted trip.

7. Having listened to the recorded conversation, we confirmed that the PRO concerned had never used the word "complain". She only suggested that the complainant "contact" Hospital A or HA to express her views. Given that each hospital operates independently, her answer was understandable. However, we opined that as Hospitals A and B were both under HA, her failure to provide a substantive answer or to contact HA on the complainant's behalf did give the impression of shirking responsibility.

8. Moreover, as the complainant had already got a consultation date with Hospital A, Hospital B should have tried its best to offer the same date. This would obviate the need for the patient to get a new referral letter, thus making it more convenient for her and saving resources for HA at the same time. Since it is a practice across HA hospitals to allow patients to seek consultation at another hospital upon change of residence, to arrange consultation for the complainant on that same date should not result in unfairness.

Conclusion and Recommendations

9. Overall, The Ombudsman considered the complaint unsubstantiated. However, he recommended that HA:

(a) consolidate and publicise information on validity periods of referral letters set by specialist out-patient clinics of its hospitals for easy reference and remind its frontline staff to explain the arrangements when answering enquiries; and

(b) review the mechanism for arranging consultation appointments for patients who need to transfer to another hospital upon change of residence.

A case of inadequate administrative arrangements

Housing Department ("HD")

Case No. OMB 2010/2661 – Public housing allocation
Allegation: failing to handle fairly the complainant's application for public housing according to the sequence of applications – substantiated



Details of Complaint

In 2006, the complainant applied to HD for public housing. In mid-2010, he went to HD's Customer Service Centre to check the latest application status, only to find that some applicants in his category with later Waiting List Application Numbers had been allocated flats, while he was still waiting for an offer. He asked HD staff for an explanation but did not get a satisfactory answer. He, therefore, lodged a complaint with this Office.

Response from HD

Public Housing Allocation Procedures

2. Applications for public housing are generally processed according to the sequence of registration on the Waiting List (i.e. the application numbers), the number of family members and the applicant's district choice. Flats are allocated randomly by the computer. When an application approaches the allocation stage for the first time, HD would investigate and verify the eligibility of the applicant. When an application is ready for allocation depends on various factors, such as the availability of flats of suitable size in the applicant's chosen district, or whether the applicant has changed his/her district choice.

3. If resources permit, HD would try its best to accommodate requests from those applicants with special allocation needs. To make sure that an applicant is still eligible for public housing when the tenancy agreement is signed, HD may conduct spot checks on or review those cases in which eligibility had been verified two or more years ago.

4. On the 15th of each month, HD publicises the "Highest Numbers that have accepted Public Housing Offers" ("Highest Numbers") for different categories of public housing applications via newspapers, the Department's website and its Customer Service Centre. Those "Highest Numbers" are for applicants' reference only and do not imply that all applicants with lower numbers have accepted public housing offers. All eligible applicants have three chances of flat allocation.

The Complainant's Case

5. The complainant's application was registered on the Waiting List in 2006 and assigned an application number. In early 2008, HD gave him the first housing offer in his chosen district but it was refused. In June 2008, the complainant changed his choice of district.

6. In early 2010, HD verified the complainant's eligibility for allocation again. In mid-June, HD publicised the "Highest Numbers". The complainant found that the "Highest Numbers" for his category had exceeded his application number.

He subsequently pressed HD five times for an early allocation. HD staff promptly responded and explained the situation to him either over the telephone or through written replies. The complainant's application reached allocation stage at the end of June. He was allocated a flat the following month.

HD's Comments

7. HD stated that it had processed the complainant's application according to the availability of public housing resources and the sequence of registration of applications, hence there had been no delay. HD further clarified that the "Highest Numbers" publicised in mid-June 2010 included those public housing applications where the first housing allocation offer was accepted. Applicants with application numbers close to the complainant's and who needed to undergo certain procedures before allocation (such as re-verification of eligibility) got the second offer at about the same time as the complainant did.

8. Furthermore, although the complainant's application had reached the allocation stage by the end of June 2010, he made a number of enquiries. HD thus had to suspend allocation temporarily each time to clarify if there was any update of family particulars or new request, so as to avoid making an unsuitable offer which might cost the complainant one chance of allocation.

9. HD admitted that the above arrangement needed improvement. A "triage" system was thus introduced. If a public housing applicant's enquiry or complaint does not affect the order of allocation or involve new requests, HD must reply within two to three working days. Meanwhile, applications approaching the allocation stage would be put on designated shelves for centralised management and closer follow-up actions.

Our Comments

10. HD's suspension of housing allocation to the applicant making an enquiry or a complaint on the presumption that such enquiry or complaint might involve requests affecting the allocation process might be unfair to the applicant concerned. This case showed that the complainant's enquiries had nothing to do with the factors relating to housing allocation. Nevertheless, HD suspended housing allocation for him without his knowledge. This appeared to be a punishment in disguise and was obviously unfair to him.

11. Besides, to our regret, HD had failed to provide a satisfactory explanation for such suspension all along.

12. In light of the above, The Ombudsman considered this complaint substantiated.

Other Observations

13. Announcing the "Highest Numbers" every month to inform applicants of latest allocation status (paragraph 4) is itself a good arrangement. However, HD failed to explain at the same time the various factors afore-mentioned (paragraphs 2 and 3) that would affect the actual sequence of housing allocation. Applicants would inevitably think that late comers were served first and feel dissatisfied. HD should consider giving a brief explanation when publicising such information.

Recommendations

14. The Ombudsman recommended that HD:

(a) review in due course the "triage" system and other measures (paragraph 9) for full and effective implementation ; and

(b) when publicising the latest information on public housing applications (paragraph 4), consider giving a brief explanation as to why actual public housing allocation may not follow the sequence of application numbers.

15. HD accepted our findings and agreed to implement the above recommendations.

A case of faulty procedures

Labour and Welfare Bureau ("LWB")

Case No. OMB 2009/4463 – Registration Card for People with Disabilities
Allegation: unreasonably rejecting an application for Registration Card for People with Disabilities – partially substantiated



Details of Complaint

The complainant had had poliomyelitis for over 50 years. In 2004, upon his application to the Central Registry for Rehabilitation ("CRR") under LWB, he was issued a Registration Card for People with Disabilities ("Card").

2. In 2009, the complainant applied for renewal of his Card. However, CRR asked him to provide a recent medical certificate. Since he had had no need for medical services for years, he was unable to provide one. He considered the medical certificate that he had submitted in his first application in 2004 to be sufficient proof of his disability. He alleged that the staff concerned had made things difficult for him and handled his case irresponsibly.

Our Comments

3. As the disabling condition of some disabled people may change over time, it is in principle not wrong of CRR to request those who apply for renewal of the Card to provide proof of their disabling condition. However, some diseases may result in permanent disability. CRR should exercise discretion when processing applications involving such cases.

4. Common sense tells us that the complainant would not recover from the disability. CRR should have exempted him from re-submitting proof of disability, given the medical certificate of 2004.

5. This Office found a lack of flexibility in CRR staff. Nevertheless, on learning that the complainant was unable to provide a recent medical certificate, the staff had taken the initiative to contact him and suggested ways to help him to obtain proof of disability through other channels. The staff rejected his application only after all options turned out to be unfeasible. This showed that the staff had not been shirking responsibility or trying to make things difficult for the complainant.

6. In this light, The Ombudsman considered the complaint partially substantiated.

Other Observations

Inadequate Information on Acceptable Documentary Proofs

7. Our investigation found that apart from medical certificates, LWB also accepts documentary proofs such as: the Social Welfare Department's certification that the applicant is a Disability Allowance recipient or rehabilitation service user, and a driving licence for the disabled issued by the Transport Department. However, the Guidance Notes for applicants named only one acceptable documentary proof: "certificates issued by doctors or allied health personnel". We considered such practice inadequate.

Insufficient Publicity for the Card

8. This Office also noted that LWB had not publicised the Card well enough. While the Card had been introduced for nearly 20 years, only about 10% of the disabled people in the territory held the Card. The registration rate was far too low.

Recommendations

9. The Ombudsman recommended that LWB:

(a) consider waiving the requirement for recent proof of disability in renewal cases when it is evident that the applicants are permanently disabled;

(b) consider formulating relevant guidelines to assist staff in determining a waiver of recent proof of disability;

(c) specify in its Guidance Notes for applicants all types of acceptable documentary proofs of disability;

(d) inviting other departments such as the Social Welfare Department and the Transport Department to refer eligible people to apply for the Card; and

(e) draw up comprehensive and long-term publicity programmes for the Card.

A case of lack of flexibility

Lands Department ("Lands D")

Case No. OMB 2008/1771 – Release of *ex gratia* payment
Main allegations: (a) failure to inform the complainants promptly that a road construction project that had necessitated the revocation of their land licence had been suspended; (b) refusal to release *ex gratia* crop compensation to the complainants after revoking their land licence – substantiated



Details of Complaint

In 2004, Lands D notified the complainants that Government would resume their farmland for a road construction project and that their Government Land Licence would be revoked that year. They were required to stop cultivation on the land. The Agriculture, Fisheries and Conservation Department would assess the value of their crops on the land and Lands D would calculate the *ex gratia* crop compensation payable to them.

2. The complainants discontinued cultivation on the land. Consequently, the vegetation there withered. However, Lands D neither cleared the land nor released the *ex gratia* compensation to the complainants. It was not until 2008 that the complainants learned that the road construction project had been suspended since 2005 and they would not be given any *ex gratia* payment. The complainants were dissatisfied that Lands D had failed to notify them promptly of the suspension of the project and that no compensation was granted for their loss.

Lands D's Explanation

3. Lands D grants *ex gratia* compensation to landowners, tenants or long-term occupiers who are affected by Government resumption of land and suffer a loss because of clearance of their crops. Lands D will as far as possible make the *ex gratia* payment before the clearance date, so that the land could be promptly vacated and cleared for commencement of the works project.

4. As Lands D had not actually cleared the land in this case, the Department could not release the *ex gratia* payment to the complainants even though the value of their crops had been assessed and Lands D had confirmed the amount payable.

5. Upon our further inquiry, Lands D added that the land would be affected by some other development project in the area and so might be cleared later. Should there still be any crops and farm equipment eligible for compensation, the complainants would be granted *ex gratia* payment after a re-assessment.

Our Comments

6. Clearly, Lands D should have notified the complainants as soon as possible of the suspension of the road construction project, instead of informing them nearly three years later that they would not be granted an *ex gratia* compensation. The Ombudsman, therefore, considered allegation (a) substantiated.

7. Furthermore, the complainants had suffered a loss because they had discontinued their cultivation on the land upon notification of the revocation of their land licence, resulting in withering of the vegetation there.

8. Lands D refused to release the *ex gratia* payment to the complainants on the grounds that the Department had not cleared the land. However, the complainants pointed out that the vegetation had withered because they had acted on Lands D's order to stop their cultivation and that was an allegation that Lands D could not refute. In this light, The Ombudsman considered that Lands D should have compensated the complainants according to the original assessment of crops in 2004. Allegation (b) was, therefore, substantiated.

9. Overall, The Ombudsman considered this complaint substantiated.

Lands D's Follow-up Action

10. Regarding allegation (a), Lands D admitted that it should not have delayed notifying the complainants of the suspension of the road construction project and hence the cancellation of the *ex gratia* payment. Accordingly, it had instructed its staff to notify the affected parties as soon as possible when handling similar cases in future.

11. As regards allegation (b), Lands D accepted our recommendation to grant *ex gratia* payment to the complainants of an amount no less than what they were entitled to according to the original assessment of crops in 2004 when it later proceeded to clear the land for the development project mentioned in paragraph 5 above.

A case of negligence and unreasonable decision

Legal Aid Department ("LAD")

Case No. OMB 2010/0701 – Panel lawyers
Allegations: (a) unreasonably refusing to remove an adverse remark against the complainant; and
(b) failing to introduce procedures to govern the addition and removal of such remarks – unsubstantiated



No Legal Aid Cases Assigned

The complainant was a barrister on the list of panel lawyers of LAD. He found that LAD had not given him legal aid assignments since its Departmental Monitoring Committee ("DMC") had put a remark (previously called "indicator") against his name pursuant to an order made by the Barristers Disciplinary Tribunal that had suspended him from practice for four months.

2. Since the lapse of the suspension order, he had repeatedly requested LAD for removal of the remark but to no avail. He considered it unreasonable that LAD did not have any procedure for removing the adverse remark, which he believed to have affected his chance of being assigned legal aid cases.

Response from LAD

Evaluation of Panel Lawyers and Adverse Remark

3. LAD evaluates the performance of panel lawyers to ensure the quality and standard of those who are assigned legal aid cases. Panel lawyers whose performance is considered unsatisfactory will be given chances to make representations both before the matters are reported to DMC and before it comes to a decision as to whether they should be placed on the Record of Unsatisfactory Performance or removed from the panel.

4. For panel lawyers who have been disciplined by their own professional regulatory bodies, LAD will put a remark against their names. Such a remark represents a factual record indicating that disciplinary proceedings have been taken and is to flag information to enable LAD to fulfil its statutory duty to assign publicly-funded legal aid cases to competent lawyers. A lawyer with a remark requires special approval to receive legal aid assignments.

Failure to Notify LAD of Disciplinary Proceedings

5. In the Legal Aid Panel Entry Form and a Data Update Form that he completed in 2000 and 2006 respectively, the complainant stated that he was not aware of any disciplinary proceedings being brought against him. In 2007, the Hong Kong Bar Association notified LAD of the suspension order made against the complainant and LAD put a remark against his name in the same year. The Department sent a Data Update Form to him in 2008 but he did not respond.

Allegation (a)

6. Although LAD refused to remove the remark, the complainant's name would remain on the legal aid panel. In fact, those with a remark may still be assigned legal aid cases with special approval. Nevertheless, as the interests of aided persons are paramount in the assignment of legal aid cases, findings by the disciplinary tribunals for legal professionals must be given regard because those regulatory bodies institute disciplinary proceedings only in cases of serious professional misconduct. Therefore, the remark must stay.

Allegation (b)

7. LAD explained that all relevant information including disciplinary proceedings must be made available to ensure that legal aid cases are assigned to competent lawyers. LAD considered disciplinary proceedings to be a matter of record.

8. As DMC is not involved in the disciplinary proceedings, it would be inappropriate and impossible for it to require or receive any representation from panel lawyers who are the subject of such proceedings.

Our Comments

9. We considered that all substantiated findings by the regulatory bodies involving certain degree of professional misconduct would reveal a want of professionalism in the lawyers concerned and underline the gap between their standard of service and that generally expected of the profession. We accepted that there were sound reasons for LAD not to remove the remark. Allegation (a) was unsubstantiated.

10. Furthermore, the remark was a factual record of disciplinary proceedings in which LAD had no involvement at all. As such, it would be inappropriate and indeed

impracticable for LAD to consider representations on the disciplinary proceedings. Allegation (b) was, therefore, also unsubstantiated.

Conclusion and Recommendation

11. Overall, The Ombudsman considered the complaint unsubstantiated.

12. While it remains the obligation of panel lawyers to report disciplinary proceedings, LAD should consider adding a reference in the Manual for Legal Aid Practitioners that it would consider the record of disciplinary decisions of the professional bodies when assigning legal aid cases.

13. In response to our recommendation, LAD amended the aforesaid Manual.

Leisure and Cultural Services Department ("LCSD")

Case No. OMB 2009/2183 – Supervision of venues
Allegations: (a) improper supervision of a training centre managed by a Sports Association, thereby depriving the general public of its use; and (b) failing to follow up properly the complainant's enquiries concerning the Sports Association's refusal to account for rejecting his membership application – substantiated



Details of Complaint

The complainant claimed that he was a qualified coach as well as a range officer for a type of sports activity. When he learned that a training centre ("the Centre") for this sport managed by a Sports Association ("the Association") was opened, he joined its basic training course. On completion of the course, he immediately applied for membership of the Centre and paid the $700 membership fee so that he could later hire its facilities in his personal capacity for self-practice.

2. However, an Association staff later called and told him that his application had been rejected without giving him any reasons. He requested the Association to furnish him with a written explanation and formally notify him to get back the membership fee he paid. In this connection, he called LCSD for enquiries but a staff member replied that as the management of the Centre had been entrusted to the Association, she could not follow up his case. By the time he complained to this Office, he had not yet received any reply from the Association.

3. The complainant alleged that except for the training sessions organised by the Association, the Centre was not open to the public. He, therefore, suspected that the Association was using the remaining periods of the venue for private purposes. He further opined that even though LCSD had entrusted the operation of the Centre to the Association, it should never allow the Association to decide freely whether or not to open the Centre to members of the public and thus deprive them of their right to use the facilities.

Sports Training Bases

4. Since the lack of dedicated sports training bases was not conducive to structured training programmes and would hence impede long-term sports development in Hong Kong, LCSD tried out a pilot scheme, converting some of its under-utilised venues into sports training bases to be managed by non-profit-making sports associations. The Centre managed by the said Association was one of those training bases. According to the Tenancy Agreement signed by both parties, the Association would operate the Centre on a self-financing basis for seven years.

Initial Planning Not Thorough

5. LCSD and the Association had held different views on the modification project of the Centre, causing delay in the project, which took about eight months to complete instead of three as scheduled. Meanwhile, it had taken much time for the Association to obtain terms that would meet LCSD requirements when taking out public liability insurance for the Centre. As a result, the official opening of the Centre was also delayed. Moreover, because of space constraints in the venue and for safety reasons, only 15 practice bays could be used eventually instead of 20 as originally planned. The usable rate of the Centre was thus reduced. LCSD's initial planning of the Centre was indeed not thorough.

Failure to Monitor Closely Compliance with Tenancy Agreement

6. The Tenancy Agreement provided that the Centre should be open for public use during its opening hours when it was not used for training. However, the Tenancy Agreement was already well into its third year when the Association still allow public use of the Centre facilities only through its training courses. It had yet to fully comply with the provisions of opening the Centre to the public so that they could hire its facilities for self-practice.

7. Although LCSD claimed that it had monitored the operation of the Centre via routine communication with the Association, regular inspections, working meetings and the utilisation statistics of the Centre submitted by the Association, we did not see from the LCSD documents any formal minutes of meetings between the Department and the Association nor any substantial work plans or review reports submitted by the Association to the Department. Obviously, the Department had failed to closely monitor the Association's compliance with the Tenancy Agreement.

Failure to Handle the Complaint Properly

8. LCSD was ignorant about the membership system launched by the Association. Upon receipt of the complaint, it then enquired with the Association and stopped it from doing so on the grounds that the system would restrict other members of the public from using the Centre. The complainant was thus dissatisfied when his application for membership was rejected. Meanwhile, the Association failed to formulate its complaint handling policy and procedures for the Centre as required under the Tenancy Agreement.

9. LCSD said that its staff had explained to the complainant that the operation of the Centre had been entrusted to the Association. The complaint, therefore, would be followed up by the Association direct. However, as the complainant's enquiries and complaint were lodged with LCSD, the Department was still duty bound to ensure

that his complaint would be handled properly even though the Association staff had indicated that she would reply to the complainant direct. The LCSD staff concerned obviously failed to follow up the case actively and properly as he only enquired with the Association more than three weeks after the complaint was received.

Conclusion and Recommendations

10. Against this background, The Ombudsman considered the complaint substantiated.

11. We recommended that LCSD:

(a) review with the Association the development directions and substantial work schedules of the Centre as soon as possible to ensure that the services stated in the Tenancy Agreement could be provided;

(b) discuss with the Association the arrangements on opening up the Centre facilities for public use;

(c) establish a concrete and effective communication mechanism to strengthen the coordination with the Association for effective monitoring of the operation of the Centre;

(d) urge the Association to set up an effective and feasible complaint mechanism for the Centre as soon as possible; and

(e) step up publicity to promote the facilities and training courses of the Centre and encourage the public to participate actively in the sports activities concerned.

A case of improper supervision

Leisure and Cultural Services Department ("LCSD")

Case No. OMB 2009/3143 – Allocation of venues
Main allegation: being inflexible in refusing to arrange for shared use of a roller skating rink between the general public and a training class organised by a sports association – substantiated



Details of Complaint

The complainant often took his sons to an LCSD roller skating rink ("the Rink") on Sunday evenings for practice. Between August and October 2009, however, LCSD allowed a training class held by a sports association to have exclusive use of the Rink from six to eight o'clock every Sunday evening. The Department further refused to make available part of the Rink for use by the general public. He considered LCSD inflexible and insensitive to public interest.

Response from LCSD

2. The Association was LCSD-subvented and eligible for priority block booking of venues. Its booking application had been processed in accordance with established venue-booking guidelines, which stipulated, amongst other things, that "during peak hours (including Sunday whole day), only one-third of the total available hours of the month may be allowed for block booking". Of the total number of peak hours of August 2009, only 11% was booked by the Association for using the Rink. This fell within the stipulated limit. On the other hand, the provision in the guidelines that "not more than half the total number of facilities at each venue at any one time may be allowed for block booking" should only apply to venues with more than one facility of the same type available for block booking. Since there was only one roller skating rink in the playground where the Rink is situated, this provision did not apply.

3. Although there was no maximum number of users allowed at each of the three roller skating rinks in the district, the Association opined that since the training course was for beginners, adequate space was needed for basic skills training. Besides, roller skating is a high-speed sport that could easily lead to injury. For the sake of safety, the Department could not accept the complainant's suggestion to make available part of the Rink to the general public during the training sessions. Participants in the training course had strongly demanded that the sessions be held on consecutive Sundays. Sunday courses also recorded a higher enrolment and attendance rate. The Association, therefore, did not agree to reschedule the training class to other time slots.

4. While private ice skating rinks allow shared use of venue between training classes and the public, this mode of operation, however, could not be adopted by public roller skating rinks. It was because in addition to coaches, private rinks employ a number of staff to maintain order and monitor user flow to ensure users' safety. Moreover, fees for the class organised by the Association were very low and it would be impossible for it to bear such staff costs. If other people were allowed into the Rink during the training class, it would be difficult to guarantee their safety.

5. A notice had been put up at the Rink for public information after the Association's successful block booking. LCSD would continue to monitor the enrolment and attendance rate of the training sessions. It would liaise with the Association with a view to striking a balance between its right to use the Rink and that of the general public.

Our Observations and Comments

6. The fact that LCSD allowed exclusive use of the Rink by the Association during peak hours on Sunday evenings reflected that it had neglected the popularity of the time slot and failed to consider the public's right to the Rink during those hours. Furthermore, LCSD rejected the idea of reserving part of the Rink for public use during the training sessions because it considered the provision of "not more than half the total number of facilities for block booking" under the venue-booking guidelines not applicable to the Rink (paragraph 2). Nevertheless, roller skaters do not need exclusive use of a venue. The Department's arrangements obviously failed to balance the interests of various parties.

7. LCSD argued that its refusal to reserve part of the Rink for the general public during the training class was also based on safety consideration. However, no maximum number of users had ever been set for the Rink. Roller skaters of different skill levels had been using the Rink at the same time. LCSD obviously adopted double standards in this regard.

8. We looked up the Places of Amusement Regulation and found that the licensing conditions for ice skating rinks do not include a limit on the number of users. A certain private ice skating rink of comparable size to the Rink can accommodate more than 200 skaters, whereas the Rink allowed only about 20 participants during the training class. It was a stark contrast and LCSD failed to provide a satisfactory explanation. This raised doubts over whether the Department had made good use of public resources. In fact, no available information shows that ice skating is a safer sport than roller skating.

Conclusion and Recommendations

9. On the whole, LCSD had failed to take into consideration various factors and the interest and needs of the general public when it gave the Association exclusive use of the Rink. The Ombudsman, therefore, considered the complaint substantiated.

10. The Ombudsman recommended that LCSD:

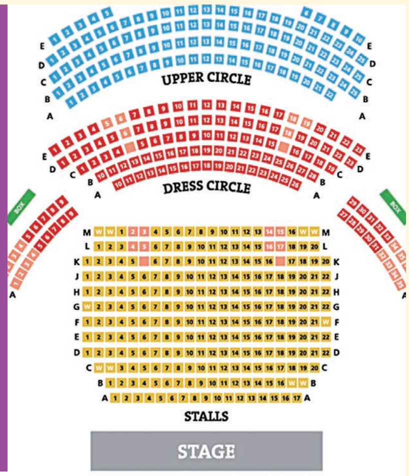
(a) review the procedures for priority booking of sports facilities during peak hours by organisations and formulate clear guidelines with reference to the nature of different sports; and

(b) re-examine the feasibility of "shared use" of venues in order to balance the interests of the Association and those of the general public.

A case of lack of consideration and insensitivity to public interest

Leisure and Cultural Services Department ("LCSD")

Case No. OMB 2010/1675 – Rent reduction of venues
Allegations: performance venues in the New Territories: (a) using different criteria and procedures from those in the urban areas in processing applications for rent reduction, causing confusion – substantiated; (b) putting financially tight organisations at a disadvantageous position by asking for a deposit before assessing their applications for rent reduction – unsubstantiated; and (c) being unreasonable in estimating ticket revenue of an event and determining the amount of rent reduction on a full house basis – partially substantiated



Details of Complaint

In early 2010, the complainant, on behalf of an organisation ("Organisation A"), applied to LCSD for hiring the cultural activities hall at a town hall in the New Territories ("NT") to hold a concert. Upon approval of the venue hiring, she submitted an application for rent reduction. However, LCSD asked her to pay a deposit to confirm the venue hiring first before processing her rent reduction application. Moreover, the Department assumed a "full house" in estimating the ticket revenue of the concert and determining the amount of rent reduction. Her application for rent reduction for the concert was subsequently turned down.

2. The complainant indicated that Organisation A used to hire its performance venues in the urban area and each time the rental subsidy had been granted before the deposit was paid. Arrangements of the NT venues were clearly different and disadvantageous to those financially tight organisations. Estimation on the assumption of a "full house" was also unreasonable. Since all performance venues were managed by LCSD, the complainant found it confusing that they should have different assessment criteria and approval procedures in handling applications for rent reduction.

Response from LCSD

Allegation (a)

3. Discrepancies in handling rent reduction applications for venues in urban and NT areas originated in the different approval criteria and procedures set by the former Provisional Urban Council, the Provisional Regional Council and their executive departments. For instance, the Rental Subsidy Scheme ("RSS") of the urban venues offered subsidies at a fixed ratio (65% off for major venues) while the Hire Charge Reduction Scheme ("HCRS") of the NT venues would grant rent reduction on the basis of the income and expenditure of an event. Reduction of 50% to 80% would be granted only if there was a deficit.

4. Since taking over the functions of the two Municipal Councils in 2000, LCSD had begun to review and align gradually the operation and fees/charges of the urban and NT performance venues and facilities. A Working Group on the Review of Fees and Charges of Cultural Services was set up in 2008 and an initial review was already completed. After discussion and consultation with the relevant policy bureau, the rent reduction schemes of the urban and NT venues could be aligned as soon as possible.

Allegation (b)

5. One of the approval criteria under HCRS was that the applicant organisation must be a non-profit making organisation "considered to be in genuine need of financial assistance". As such, a detailed estimate of income and expenditure for the event to be held was required. To prepare the financial estimates after hiring of venue was approved can obviate unnecessary administrative work for the organisation and save administrative resources for LCSD.

6. In fact, venues in both urban and NT areas required the applicant organisation to pay a deposit equivalent to 25% of the rent. The difference was that under RSS of the urban venues, applications for venue hiring and rental subsidy were processed simultaneously, and the amount of deposit was calculated using the actual rent (i.e. net rent after the subsidy) as the basis. As for HCRS of the NT venues, applications for rent reduction would only be processed after venue hiring was confirmed with the deposit paid. Therefore, the amount of deposit was calculated with reference to the basic (i.e. original) rent.

7. The concert held by Organisation A was ultimately granted a 70% rent reduction. Only $225 needed to be settled after deducting the 25% deposit paid. This should not be a burden on its finance.

Allegation (c)

8. Although it was stated in "Application for Reduction of Hire Charges" for the NT venues that total ticket revenue should be estimated "on a full house basis", it actually meant that the applicant organisation must list out in detail the price schedule and the total number of seats. In assessing an application for rent reduction, LCSD would always use 50% attendance rate to estimate the ticket revenue of an event. In fact, according to the initial financial estimates submitted by Organisation A, the concert in question would record a surplus in either the full or half house scenario. Rent reduction would not be granted. LCSD staff had explained this to the complainant and suggested that the financial estimates be amended to include expenditures previously left out. The amended version could be submitted to LCSD for reconsideration. The concert was finally offered a rent reduction (paragraph 7).

Our Observations and Comments

Allegation (a)

9. It had been more than ten years since LCSD took over the functions of the two Municipal Councils. Still, RSS of the urban venues and HCRS of the NT venues were yet to be aligned. As a result, discrepancies in assessment criteria, handling procedures and the rate of rent reduction still exist. Applicants would inevitably feel confused. All this reflected poorly on the efficiency of LCSD.

10. In fact, the relevant policy bureau had repeatedly urged LCSD to complete the realignment exercise as early as possible. However, there had been little progress. Though the review process was re-activated in 2008, the timetable for consultation was yet to be confirmed. This was indeed undesirable.

11. In the light of the above, The Ombudsman considered allegation (a) substantiated.

Allegation (b)

12. The ratio of deposit required for both the urban and NT venues was originally the same. However, different handling procedures for rent reduction applications led to discrepancies in the basis of calculating the amount. As the NT venues would process an application only after the deposit was paid to confirm a hiring, the amount of deposit was thus calculated with reference to the original rent (paragraph 6). Organisation A considered such practice of the NT venues to exert a greater financial pressure on the applicant organisation and hence unreasonable. Actually, it all originated from the difference in handling procedures for rent reduction applications.

13. The Ombudsman, therefore, considered allegation (b) unsubstantiated.

Allegation (c)

14. We had examined the application for rent reduction by the complainant and confirmed that LCSD had estimated the ticket revenue of the concert based on the 50% attendance rate. However, the application form did require the applicant organisation to estimate total ticket revenue "on a full house basis". Thus, it was only natural that the complainant had misunderstood the situation.

15. The Ombudsman, therefore, considered allegation (c) partially substantiated.

Conclusion

16. Although staff members of LCSD had handled the complainant's application for rent reduction in accordance with prevailing policy and guidelines, her complaint arose because the Department failed to align the fees and charges of the urban and NT venues. Overall, this complaint was partially substantiated.

Main Recommendations

17. The Ombudsman recommended that LCSD:

(a) expedite the realignment of fees and charges of the urban and NT performance venues and facilities, as well as the formulation of a work plan and timetable for this. Consultation should be conducted with a view to eliminating differences in work practices and charging criteria within the same department; and

(b) review at once the assessment criteria and application procedures of RSS and HCRS, and update the Guidelines on Reduction of Hire Charges for the NT venues.

A case of low efficiency and faulty procedures

Post Office ("PO")

Case No. OMB 2010/2186 – Mail redirection service
Main allegation: lax processing of applications for mail redirection service – substantiated



Details of Complaint

In early June 2010, the complainant came to notice that he had not received any mail for several days. He learned from the postman that since 1 June all mail sent to him at his address ("original address") had been redirected to another address. As the complainant had never applied for mail redirection service, he lodged a complaint with us against PO for being careless.

Procedures for Processing Applications for Mail Redirection Service

2. Applications for mail redirection service should be made in writing. When a person hands in his/her application to a post office, staff will check his/her identification document.

3. Upon receipt of the application, the Redirection Section will check with the postman serving the old address. In case of doubt, the postman would go to the old address for verification. If the old address appears to be vacant or there are special circumstances, he should report the situation to his supervisor, who will then conduct a site visit. The applications will be considered accordingly.

4. To prevent fraudulent applications, the original of confirmation letter for mail redirection service ("confirmation letter") would be sent via ordinary mail to the new address, with a copy sent by registered mail to the old address.

The Events

5. In this case, the application for mail redirection service was submitted on 20 May 2010 by a Mr A. PO staff checked his identity card. Subsequently, a postman tried to verify the information at the "original address", but no one answered the door. Assuming that the premises had already been vacated, he suggested that PO approve Mr A's application. A few days later, the postman delivered the confirmation letter sent by registered mail to the "original address". The complainant's wife said that there was no Mr A living there. The postman thus asked the Redirection Section to follow up. An officer of the Section then telephoned Mr A, who claimed that the occupants of the "original address" had denied his residence there only because they and he were not on good terms. His explanation was accepted and mail redirection service took effect that same day.

6. Later on, Mr A requested to include the complainant in the redirection service. He then faxed to PO a written application signed by the complainant and a copy of his identity card. That application was also approved and redirection service started on 1 June 2010.

Our Observations and Comments

7. When Mr A applied for mail redirection service, PO staff only checked his identity card. Although that was in keeping with PO's then prevailing procedures, loopholes in the procedures were evident. Since 27 May 2010, PO had revised those procedures to require the applicant to provide original documentary proof of the old address.

8. Moreover, the postman in this case suggested that PO approve Mr A's application, merely because no one answered the door at the "original address" when he went there for verification. The postman even stated that Mr A had lived there. We considered this most perfunctory.

9. Meanwhile, though the complainant's wife had pointed out that there was no Mr A at the "original address", staff at the Redirection Section still chose to believe Mr A's one-sided story and approved his application. Such practice was most slipshod and defeated the whole purpose of sending out the confirmation letter by registered mail.

10. Mr A's request to include the complainant in the mail redirection service seemed to reflect his intention to steal the complainant's mail. His application was easily approved by PO staff because PO had no proper guidelines in place for its staff to assess such requests judiciously, thereby allowing people with ulterior motives to take advantage of the loopholes.

Conclusion and Recommendations

11. In this light, The Ombudsman considered the complaint substantiated.

12. He recommended that PO:

(a) revise its procedures to stipulate clearly that the postman should make follow-up inquiry if he has doubts during verification of information at an old address;

(b) formulate procedures for submitting requests for adding new applicants to any mail redirection service already approved and state clearly the documentary proofs required; and

(c) regularly remind staff of the procedures for processing applications for mail redirection service: all information provided by applicants should be carefully checked and verification reports accurately completed.

A case of lax procedures and carelessness

Security Bureau ("SB")

Case No. OMB 2010/3027 – Sentence review
Allegation: delay in processing the complainant's sentence review – substantiated



Details of Complaint

The complainant was a lifer. In April 2008, the Correctional Services Department ("CSD") referred his case to the Long-term Prison Sentences Review Board ("the Board") for sentence review. However, he was not notified of the result of the review until January 2010. He was dissatisfied that SB, which provides secretariat service to the Board, had delayed processing the review.

Our Findings

2. We found that three months after receiving CSD's referral, the Board had reviewed the complainant's case and decided not to recommend to the Chief Executive to substitute his indeterminate sentence with a determinate one. However, the Board Secretariat did not notify the complainant of the result until 18 months after the Board's decision.

3. SB explained that the time lag was due to the need to implement some new requirements imposed by the Court of First Instance after a judicial review of another case in October 2008, i.e. the Board should disclose to inmates under sentence review all relevant reports and documents before its deliberations and should give adequate reasons for not recommending a sentence remission in its notification of

the review result. Consequently, SB had to conduct a comprehensive review of the Board Secretariat's procedures and workflow, seek legal advice from the Department of Justice on the sample notification letters to inmates and arrange the outsourcing of additional translation work. During the process, the Board Secretariat suspended issue of all notification letters to inmates.

4. We accepted that SB must ensure compliance with the Court's new requirements and a comprehensive review was time-consuming. However, the results of sentence reviews are of great concern to inmates and the Board Secretariat should always notify them of the results as soon as practicable.

5. As the complainant's sentence review had been completed well before the Court's imposition of the new requirements, SB's implementation of the new requirement regarding transparency of reports and documents was irrelevant to his case.

6. Regarding the other new requirement of giving adequate reasons for the Board's decision, SB should have been more flexible and considerate by informing the complainant of the result soon after receiving legal advice on the sample notification letters. Moreover, it should have at least sent him an interim reply explaining the situation. We found SB's procrastination totally unnecessary and unreasonable.

7. The Ombudsman, therefore, considered the complaint substantiated.

Recommendation

8. The Ombudsman recommended that SB exercise flexibility should a similar situation arise in future.

A case of delay and lack of consideration

Social Welfare Department ("SWD")

Case No. OMB 2010/0193 – Disability Allowance
Allegations: (a) failing to obtain the authorisation of the complainant's mother and the consent of other family members before appointing one of her sons to handle her disability allowance – unsubstantiated; and (b) delay in handling a complaint regarding misuse of disability allowance – substantiated



Details of Complaint

The complainant's mother ("Ms A"), aged over 80, had been assessed by a doctor to be eligible for disability allowance ("DA") for one year. However, Ms A was physically and mentally unfit to handle her DA. SWD thus appointed one of her sons ("Mr B") to act on her behalf.

2. The complainant alleged that SWD had failed to obtain Ms A's authorisation and the consent of other family members before appointing Mr B. Separately, the complainant had complained to a Social Security Field Unit ("SSFU") and an Integrated Family Service Centre ("IFSC") under SWD against Mr B for misusing Ms A's DA and asked for a change of appointee to handle her DA. However, the Department delayed handling the case and the problem remained unresolved.

Our Findings

Allegation (a)

3. As Ms A was unfit to handle her DA, SWD was obliged to select an appointee as soon as possible to act on her behalf. The Department has guidelines on the selection of suitable appointees. In this case, Mr B was Ms A's next of kin and they had been living together. Moreover, he had all along been taking care of her hospitalisation matters and was willing to accept the responsibility of an appointee. SWD, therefore, appointed Mr B to handle Ms A's DA. We considered SWD's decision reasonable. As a matter of fact, the consent of other family members was not crucial. In this light, allegation (a) was unsubstantiated.

Allegation (b)

4. SWD's internal guidelines stipulate that SSFU is responsible for monitoring the handling of Social Security Allowance (including DA) by appointees on behalf of the beneficiaries. If there is any query about or objection to SWD's appointment, the case should be referred to IFSC for assessment and recommendation in order to safeguard the interests of the beneficiary. Where necessary, the Director of Social Welfare (represented by SWD's social workers) may handle Social Security Allowance on the beneficiaries' behalf.

5. In this incident, SSFU's failure to check Mr B's records of receipt and expenditure of Ms A's DA amounted to dereliction of duty.

6. Upon receipt of the complaint against Mr B for misusing Ms A's DA, SSFU had followed the established guidelines and requested IFSC to assess the suitability of Mr B as the appointee. Nevertheless, IFSC did not give SSFU a substantive reply, on the excuse that it needed time to reconcile the divergent views of Ms A's children on the appointment and to follow up on her medical assessment. IFSC had obviously been evading its responsibility, while SSFU had failed to pursue the question of the suitability of Mr B as the appointee.

7. The case dragged on for seven months before SSFU referred it to the Special Investigation Section. There was indeed a delay. Allegation (b) was, therefore, substantiated.

Overall Conclusion

8. Overall, The Ombudsman considered the complaint substantiated, because the crux of this case was whether SWD had properly monitored the handling of DA by the appointee and whether it had duly addressed the complainant's query about misuse of DA by the appointee (i.e. allegation (b)).

Recommendations

9. This Office recommended that SWD:

(a) strengthen the monitoring of frontline staff's checking of cases involving appointees in accordance with the departmental guidelines to ensure proper handling of Social Security Allowance by the appointees;

(b) formulate stricter guidelines to ensure prompt and serious action on queries about appointees and stipulate the circumstances when social workers should be quickly made appointees; and

(c) step up training for frontline staff to increase their sensitivity towards suspicious cases and enhance the effectiveness of their checks on appointees.

A case of dereliction of duty and delay

Transport Department ("TD")

Case No. OMB 2009/4217 – No-stopping restriction
Main allegation: wavering in its position on the imposition of no-stopping restriction and failing to properly reply to the complainant – substantiated



Details of Complaint

Between June and August 2009, the complainant, through the 1823 Call Centre, complained several times to TD about obstruction to traffic in Section A of a road due to frequent double parking and buses picking up and dropping off passengers at a bus-stop there. Pedestrian safety was put in jeopardy as a result. He requested that TD impose a 24-hour no-stopping restriction in the area and install railings along the pavement there.

2. Nevertheless, TD provided him with contradictory replies. In one, TD indicated that a no-stopping restriction had been imposed in Section A; yet in another, it said that a public consultation on the restriction would be conducted. Besides, TD did not respond to his request for installation of railings, but mentioned information about another section ("Section B") which was not in his complaint. The complainant considered that TD was indecisive regarding the imposition of no-stopping restriction and the information provided to him was very confusing.

The Event

3. Several months before receiving the complainant's case, TD had, in response to other complaints, sought advice from the Highways Department ("Hy D") and the Police regarding a proposal to impose no-stopping restrictions on both Sections A and B, prohibiting vehicles from parking anywhere near the bus stop at Section A between 7 am and 7 pm ("7-19 no-stopping restriction") and the areas at Section B before and after the bus stop there between 7 am and 12 midnight ("7-24 no-stopping restriction").

4. The complainant complained to TD about the obstruction to traffic in Section A in June 2009 and twice enquired of case progress afterwards. TD indicated in its three replies at the end of June, in early July and in mid-August that a work request had been issued to Hy D regarding the imposition of a 7-24 no-stopping restriction (which was in fact a 7-19 no-stopping restriction) in Section A. In another reply sent out at the end of July, TD also mentioned incorrectly that a 7-19 no-stopping restriction (which was in fact a 7-24 no-stopping restriction) had already been imposed on the relevant area of Section B at the end of June.

5. In early September, the complainant enquired again about the actual work completion date. It was not until then that TD noticed the mistakes and provided the correct information in a new reply. As there was little improvement in traffic after implementation of the above measures, TD proposed a 7-19 no-stopping restriction in the whole area of Sections A and B (they being adjacent sections). A consultation was conducted between early November and mid-December and then a work request was issued in January 2010. However, people in the area strongly objected to the new restriction since its implementation in mid-March. TD then decided to conduct a public consultation again.

Response from TD

6. TD admitted that its staff had repeatedly provided incorrect information in its replies (paragraph 4) but maintained that this was an isolated incident. The staff concerned attributed the mistakes to her having to deal with imposition of no-stopping restrictions at two road sections simultaneously. She subsequently provided the correct information to the complainant in her written reply of September.

7. As for the railings, they are generally used for the protection of pedestrians, not as a solution to illegal parking. TD, therefore, did not examine the complainant's suggestion further. However, this was not clearly explained to him.

8. People in the area objected strongly after imposition of the 7-19 no-stopping restriction at Sections A and B because of the inconvenience such restriction had caused to the local businesses. TD then held a meeting with the stakeholders and other relevant Government departments at the end of March 2010. A new round of consultation was conducted subsequent to a new proposal at the meeting.

Our Observations and Comments

9. The TD staff made repeated mistakes in her replies to the complainant. Although correct information was later provided, no effort was made to acknowledge or clarify those earlier mistakes. It was, therefore, difficult for the complainant to tell which of the replies conveyed the correct message and that inevitably left him confused. Furthermore, the mistakes had gone unnoticed for several months, showing that TD's monitoring system was in need of a review.

10. Furthermore, TD had told the complainant that a consultation would be conducted regarding the imposition of a 7-24 no-stopping restriction in Section A. However, it later decided to conduct consultation on a 7-19 no-stopping restriction covering both Sections A and B instead. This again was not explained to the complainant. Besides, the second round of consultation upon receipt of objections to the restriction gave the impression of a lack of thorough consideration before implementation of new measures as well as poor consultation work by the Department.

11. TD had an obligation to explain to the complainant its justifications why his suggestion to install railings was not accepted. It should not have simply remained silent on the matter.

Conclusion and Recommendations

12. TD staff had provided wrong information to the complainant time and again, failed to respond properly to his suggestion to install railings and wavered in its stance regarding the imposition of a no-stopping restriction. The Ombudsman, therefore, considered the complaint substantiated.

13. We recommended that TD:

(a) instruct the staff concerned to be more careful in discharging her duties and be ready to be responsible for the consequences;

(b) study ways to improve the procedures for monitoring frontline staff; and

(c) consider ways to improve the procedures for imposing no-stopping restrictions and to conduct consultations carefully to avoid giving a bad impression of indecisiveness.

A case of negligence and lack of careful consideration

Vocational Training Council ("VTC") and Student Financial Assistance Agency ("SFAA")

Case Nos. OMB 2010/1096; OMB 2010/1473 – Continuing Education Fund

Allegations: VTC – unclear notice on eligibility for course fee reimbursement – substantiated

SFAA – (a) unreasonably requesting the complainant to provide additional documentary proof for his application for course fee reimbursement – partially substantiated; and (b) delay in processing his application – substantiated



Details of Complaint

The complainant had enrolled for a programme offered by an institute ("the Institute") under VTC. Three of the modules in the programme were registered under the Continuing Education Fund ("CEF") as a reimbursable course. On completion of the course, he applied to the Office of the Continuing Education Fund ("OCEF") under SFAA for reimbursement of course fee.

2. According to the notice previously issued by the Institute on eligibility for reimbursement of course fee, applicants must satisfy the minimum attendance requirement of 80% and their overall average mark should be 50 or above for each module. As the complainant's attendance rate for one of the three modules was just 74%, he was granted reimbursement of course fee by OCEF for two modules only. When he later learned that the requirement referred to overall attendance rate, he submitted another application for the remaining module.

3. The complainant alleged that the attendance requirement had not been defined clearly in the notice issued by the Institute. Moreover, SFAA had unreasonably requested him to submit further supporting documents for his overall attendance rate, thereby causing delay in processing his application.

Response from VTC

4. VTC admitted that there had been a difference in understanding between the Institute and OCEF regarding the attendance rate. Besides, the notice was unclear. To avoid recurrence of similar incidents, VTC undertook to revise the notice and remind its staff regularly of the guidelines on processing CEF applications. In addition, the guidelines would be uploaded onto its intranet.

Response from SFAA

5. Applicants for CEF have a responsibility to provide the necessary supporting documents. When the complainant applied for reimbursement of course fee, he had only provided documentary proof for his completion of two modules. Unable to ascertain his overall attendance rate, OCEF, therefore, exercised discretion and granted him reimbursement only for the two modules.

6. OCEF had subsequently reimbursed the complainant in full on receipt of his application for the remaining third module and on confirmation of his overall attendance rate by the Institute. SFAA saw no delay in OCEF's processing of his application.

Our Comments

7. We found that VTC had not fully understood SFAA's attendance requirement and the notice in question was indeed unclear. The Ombudsman, therefore, considered the complaint against VTC substantiated.

8. As for SFAA, we agreed that applicants have a responsibility to provide the necessary documents. Nevertheless, SFAA had created difficulty for the complainant when it demanded a supporting document from him to prove his overall attendance rate. At that juncture, even the Institute was unable to provide such a document.

9. It was due to a misinterpretation of the attendance requirement that the Institute had refused to issue an additional supporting document about the complainant's overall attendance rate. As the operator of CEF, SFAA should have the responsibility to clarify with VTC the eligibility for application. However, it was only after the complainant asked for a review that SFAA sought clarification from VTC on the attendance requirement. As a result, the reimbursement of course fee was not fully granted at once to the complainant. Of the two allegations against SFAA, The Ombudsman, therefore, considered (a) partially substantiated and (b) substantiated.

Overall Conclusion and Recommendations

10. Overall, The Ombudsman considered the complaint against VTC and SFAA substantiated.

11. He recommended that VTC and SFAA improve their communication to avoid recurrence of similar incidents. Moreover, SFAA should have a better understanding of applicants' problems and maintain good communication with educational institutes when processing applications for reimbursement of course fee so as to avoid delay.

A case of lack of thorough consideration and delay

Water Supplies Department ("WSD")

Case No. OMB 2009/4508 – Water meter mix-up
Main allegation: delay in handling and failure to explain clearly the reason for meter mix-up, which resulted in overcharging and incorrect meter reading – substantiated



Unclear Explanation for Meter Mix-up

The complainant applied to WSD at the end of December 2008 for closing of her water account at a long-vacant residential flat. Shortly afterwards, she received the final bill demanding a water charge of around $900. Suspecting a mistake, she went to check the water meter of her flat and discovered that its number was different from the one stated on her final bill. Besides, the reading on the meter was some 900 units less than that on the bill.

2. She called WSD to enquire in early January 2009. WSD staff conducted a site inspection two months later and confirmed that the meter number on the bill belonged to the meter of another flat ("Flat A"). Another month later, the complainant received WSD's letter informing her that she need not pay the bill and a refund of her water deposit would be arranged. However, the reply fell short of addressing such issues as overcharging, prolonged meter misreading and also who should be responsible for the mistakes. She expressed her dissatisfaction once and again but WSD's replies just failed to answer her queries.

WSD's Account of Events

3. The complainant called the WSD hotline on 2 January 2009 to query the excessive meter reading as stated on the final bill. She informed the Department by fax on 7 January that there had been no water consumption at the flat over the past six months and requested that a special meter reading be arranged.

4. She then told WSD in mid-January that the meter number of her flat did not match WSD's record and she suspected a meter mix-up. WSD staff carried out a site inspection in March and found that her water meter had been mixed up with that of Flat A. The mistake, confirmed in a letter to the complainant at the end of April, was subsequently rectified and the complainant was told that she need not pay any water charge for the concerned period.

5. WSD received the complainant's letters in May and September alleging that the Department had failed to handle her case seriously and explain the matters clearly. She demanded a refund of overpaid water charges. The Department wrote back to her in June and November respectively to explain the progress and apologised for taking a longer time to process the case. It also reiterated that she should not need to pay any water charges for the period concerned.

WSD's Response to Complaint

Delay in Processing

6. On receiving the complainant's dispute about water charges on 7 January, WSD requested the Customer Services Section within two weeks to arrange a site inspection. Nonetheless, due to heavy workload, an inspection could not be conducted until early March. In late April, the complainant's representative made telephone enquiries, which the Customer Accounts Section ("CAS") immediately answered and followed up with a written reply two days later. As there were two flats involved in the case, it had to be handled with care. There was no deliberate delay.

Failure to Explain Clearly

7. CAS had informed the complainant of the case progress and the meter verification procedures in a reply in June. However, the Department could not figure out why the meters had been mixed up or who should be held responsible. WSD believed that it happened either when records of meter numbers were being made, or at the time when the data were uploaded to the computer system.

8. Despite the meter mix-up, the complainant had never paid any excessive water charges. WSD actually explained in its three letters issued in April, June and November 2009 that the final water charge for her flat during the affected period was "zero". In other words, no payment was required. In fact, the complainant had not made any payment to WSD save for the $400 water deposit.

Our Observations and Comments

9. The Ombudsman considered that there was maladministration on the part of WSD in the following areas.

Delay in Processing

10. The complainant reported the wrong meter number in mid-January 2009, but WSD did not carry out a site inspection until March. The investigation results and notification of water charge adjustment were sent respectively to the complainant and the household of Flat A at the end of April. There was a lapse of more than three months without a reasonable explanation. Such delay inevitably caused anxiety to the complainant and it was also unfair to the household of Flat A. WSD should have set a timeline for handling cases of meter mix-up so as to avoid delay or any adverse effect on public revenue. Such procrastination might also make recovery of water charges difficult.

11. WSD received the complainant's letters in May and September 2009 and sent out substantive replies at the end of June and early November. It did not issue interim replies to her within ten working days as stipulated in its performance pledge. This would only give the impression that the Department was sluggish and inefficient.

Failure to Investigate and Explain the Cause Properly

12. WSD attributed the incident to errors in record-taking or data upload to the computer system. We checked the meter installation records submitted upon completion of the estate in question and found an amended set of records submitted to WSD by the developer. According to the amended records, the numbers of both the complainant's flat and its water meter had been changed. It so happened that her original meter number became the new meter number of Flat A. In fact, for a number of flats in the estate, the meter numbers in the amended records were different from those in the original installation records.

13. We believed that WSD had failed to conduct a site inspection to verify the amended records and was, therefore, not aware that the actual meter numbers of the two flats concerned were different from the original installation records. As the housing estate was more than ten years old and the complainant's flat had changed ownership several times, more than two users should have been affected.

Failure to Clarify Overcharging

14. WSD only repeatedly stressed in its three written replies (see paragraph 8) that the complainant need not pay any water charges for the period with no water consumption. It failed to clarify the point that since she had never paid any water charges for the flat, refund of overpayment was out of the question. Consequently, the complainant misunderstood that WSD refused to give her a refund.

Conclusion and Recommendations

15. Overall, The Ombudsman considered the complaint substantiated.

16. The Ombudsman recommended that WSD:

(a) set a timeline for handling cases of meter mix-up;

(b) review its internal monitoring mechanism to ensure that its staff follow established procedures and give timely response to the public;

(c) send its staff to cross-check the meter numbers of all flats in the estate in question. Remedial measures should be taken to rectify errors, if any, and apologise to those consumers affected; and

(d) review its current practice of cross-checking meter installation and replacement to ensure accuracy and validity of records.

17. WSD accepted our findings and agreed to implement the above recommendations.

A case of delay and faulty procedures

Annex 10

Summary of Selected Case on Code on Access to Information

(Where applicable, the specific aspect of maladministration established is highlighted for clearer focus at the end of the case summary)

Hong Kong Police Force ("HKPF")

Case No. OMB 2010/2123 (I) – Release of documents
Allegation: unreasonable refusal to provide a copy of police officer statement and the guidelines for enforcement of parking contraventions



The Complaint

In October 2009, the complainant received a fixed penalty ticket from the Police for illegal parking. He complained against the Police for refusing to provide the following documents:

(a) a copy of the statement of the officer who ticketed his vehicle; and

(b) the guidelines for enforcement of parking contraventions.

Code on Access to Information

2. The Code on Access to Information ("the Code") stipulates that Government-held information should be provided to the public unless for the reasons set out in Part 2 of the Code, such as third party information, defence and security, and management and operation of the public service.

Our Findings

Statement of the Police Officer

3. The Police at first stated that it had acted in accordance with its usual procedures in withholding the officer's statement until the complainant had disputed liability to the ticket. On our request, the Police sought legal advice, which recommended acceding to the complainant's request since the statement had already been written. The Police acted accordingly.

4. We consider that the Police had contravened the Code in withholding the officer's statement without a valid reason.

Guidelines for Enforcement of Parking Contraventions

5. The Police explained that the guidelines help enhance road safety by preventing traffic accidents and maintain smooth traffic flow. Disclosure of the guidelines will harm or prejudice the prevention of traffic offences (paragraph 2.6(e) of the Code) and the proper and efficient conduct of police operations (paragraph 2.9(c) of the Code).

6. While accepting the Police's explanation, we pointed out that the Police should have, in its earlier reply to the complainant, cited the reasons under the Code for not disclosing the guidelines.

A case of unreasonable withholding of information and failure to cite reasons

Annex 11

Examples of Improvement Measures Introduced by Organisations Following Our Inquiry or Investigation

(a) Guidelines for clarity, consistency or efficiency in operation

Organisation* (Case No.)	**Administrative Enhancement**
BD (2007/4073)	Departmental instruction on disclosure of information, which hitherto disallowed the disclosure of BD's investigation reports on seepage to the public, revised and made in line with the Government Code on Access to Information
BD (2009/0836)	Timeframe set for conducting inspections to check compliance with Repairs Orders issued
BD (2009/2378)	Internal guidelines on investigation of reported unauthorised building works revised to require specifically staff, where entry into the premises concerned could not be gained, to conduct inspection in the surrounds of the premises and from nearby premises and collect full circumstantial evidence where possible so as to determine whether the building works were existing ones and safe before deciding whether to suspend follow-up of the case
FSD (2009/1811)	Guidelines on ambulance service arrangements revised to standardise the practice of delivering all pregnant patients, local or cross-border, to the nearby hospital
GS – EDB (2010/2854)	To avoid students being deprived, by mistake, of the chance to participate in the Secondary School Places Allocation System, more rigorous vetting mechanism introduced to ensure the accuracy of information submitted by schools under the Direct Subsidy Scheme
Lands D (2009/0211)	Terms added in the grant document and the certificate of exemption for drainage works requiring small house applicants to submit drainage plan and obtain approval before starting construction, to avoid possible delay in issuing the certificate of compliance because the applicants were not aware of the deficiency in the drainage of their small houses
PO (2010/0376)	Procedures revised, introducing more stringent requirements for applications for mail withholding and redirection services to avoid fraudulent applications
VTC (2010/2037)	Guidelines for invigilators revised, requiring invigilators to submit a report for irregularities happened at examination centres, which would enable better handling of subsequent complaints relating to such incidents

* see Table 4 for the full name of the organisation against the acronym.

(b) Better arrangements for inter-departmental coordination	
Organisation* (Case No.)	**Administrative Enhancement**
AFCD **HAD** (2010/1411-12)	The system and procedures for the issuance of Pak Tam Chung Barrier Permits by Sai Kung District Office and Tai Po District Office revised to ensure better coordination between the two offices in issuing such permits
BD (2009/5422)	Instructions given to staff in BD/Joint Office ("JO") on proper reply to FEHD's requests for professional advice on seepage investigation and testing methods to ensure more efficient handling of seepage complaints by JO
FEHD (2008/3210)	Guidance given to staff of FEHD/JO for them to bring to the attention of the Department's management if interface problems remained unresolved with BD/JO at the district level
GPA (2008/3649)	Led by FSTB, a coordinating committee formed following a meeting between TD, FEHD and GPA to manage a transport interchange building jointly and deal with the problem of nuisance caused by illegal occupation by street sleepers in the building
Lands D (2010/1118)	Procedures and guidelines enhanced for better communication between the District Lands Offices and the District Survey Offices in updating the land status records to avoid omission of necessary action such as cancellation of licences on land resumption

(c) Measures for better public enquiry or complaint handling	
Organisation* (Case No.)	**Administrative Enhancement**
FEHD (2010/1037-39)	Internal guidelines on complaint handling revised, requiring specifically field inspections at hours relevant to the complaint
GS - CEDB (2009/3954)	Reference and publicity materials on frequently asked questions relating to application for travel agents licences compiled and regularly updated to enable hotline staff to answer enquiries and for public information
HKMA (2010/2783)	Measures to enhance user-friendliness of service to complainants introduced, including cancellation of the function to reject calls with caller display disabled; provision of contact telephone numbers in letters to complainants and inclusion of a remark indicating issuer's signature is not required in printed letters bearing the name of the Authority's complaint handling unit

* see Table 4 for the full name of the organisation against the acronym.

(d) Measures for better service

Organisation* (Case No.)	Administrative Enhancement
FEHD (2010/0740)	Guidelines revised to require investigators of seepage complaints to use UV light torch to detect fluorescent colour water in colour water tests
HD (2009/3695)	New performance pledge made for refund of domestic rental deposit/overpaid rent and monitoring measures enhanced for early detection of cases involving delay in refund
LCSD (2009/4462)	A gate at Fanling Recreation Ground, hitherto locked up for security reasons, opened permanently after a six-month trial for the convenience of the public to access the Fanling MTR station
PO (2007/2760)	Measures introduced for citizens to opt out of the Circular Service if they do not wish to receive circular mail
URA (2010/1517)	Information on public rental housing units available for allocation provided to households affected by URA redevelopment projects at least five days before the allocation ceremony to allow them more time to study the information and make their choices

(e) More reasonable rules and charges

Organisation* (Case No.)	Administrative Enhancement
GS - EDB (2010/1874)	Rules on employing replacement speech therapists by subsidised schools relaxed whereby schools are allowed to buy speech therapist service out of cash allowance if they encounter difficulties in recruitment
HA (2007/5624)	Internal guidelines revised to limit the keeping of accounting records and debt recovery to seven years only, avoiding the need to demand payment from patients many years after their hospitalisation
HAD (2010/0401)	Requirement introduced for applicants of community hall/centre facilities to name co-users, if any, in their application to avoid possible future disputes or complaints
HD (2007/0149)	Basis for calculating the rentals of storerooms in public housing estates standardised by making reference to the market rate rather than setting a fixed rate
HD (2009/4411)	The income criteria for assessing eligibility for public rental housing rationalised by applying the income limit set at the actual time of squatter clearance instead of that set at the time of clearance announcement

* see Table 4 for the full name of the organisation against the acronym.

(f) Clearer and more information to the public	
Organisation* (Case No.)	**Administrative Enhancement**
AFCD (2008/5307)	A warning notice regarding the criminal liability for providing false information included in the application form for reclaiming stray animals and publicity stepped up to raise public awareness and understanding of the related procedures
BD (2009/3822)	New practice adopted to provide greater details of the rectification works required in removal notices, with illustrations where appropriate, so as to avoid confusion and misunderstanding
DH (2009/4180(I))	Arrangements made and publicised on the adoption of a three-tier public announcement strategy and the practice of routine public dissemination of information about sentinel events involving private hospitals
HD (2009/1121)	Guidance notes and application forms revised to make it clear that applications from new trades not on the list of permitted trades eligible to apply for use of factory buildings may also be considered
HD (2009/3806)	Notification on Allotment of Points revised to enhance transparency in the appeal mechanism
HD (2009/5416)	A message included in offer letters to prospective tenants reminding those who are also recipients of Comprehensive Social Security Assistance of the possibility of seeking financial assistance from the Social Welfare Department for payment of deposits for the tenancy
OFTA (2009/3131)	Publicity stepped up to enhance public awareness of the Unsolicited Electronic Messages Ordinance and educate the public to be cautious when entering into service agreements
SFAA (2009/4669)	Clearer information provided about the exact meaning of registered Continuing Education Fund ("CEF") courses and CEF course providers
SWD (2010/2076)	Definition of "non-owner occupied properties" added to the guidance notes for Social Security Allowance applications to prevent misunderstanding

(g) Training for staff	
Organisation* (Case No.)	**Administrative Enhancement**
EMSD (2009/3479)	Workshop on complaint handling and communication skills organised for staff following a complaint of staff having inappropriately advised the complainant that EMSD would follow up a complaint over which it did not have jurisdiction and failure to inform the complainant early of such fact, resulting in false expectation of the complainant
HD (2009/3695)	Programme of estate management training for the Housing Officer Grade revamped by working out a checklist of unattended modules of individual officers and a timeframe for their completion of all modules to ensure that all staff will be familiar with all aspects of work within a time span
ORO (2010/1560)	Training for staff strengthened following a complaint revealing repeated mistakes by staff in issuing notices in a bankruptcy case

* see Table 4 for the full name of the organisation against the acronym.

Annex 12

Index of Reviews by Full Investigation

Complaint	Department	Original overall conclusion	Decision varied/ upheld after review	Overall conclusion after review	No. of recom-mendations
Case no. 2009/4243 Failing to take enforcement action against a building which had its sewage pipe connected across the boundary of the complainant's building	Buildings Department	Inquiry - no maladministration found	Upheld	Unsubstantiated	2
Case no. 2010/1023(I) Refusal to provide the full version of meeting minutes of Building Committee I of November 2008	Buildings Department	Inquiry - no maladministration found	Upheld	Unsubstantiated	0
Case no. 2008/3237 Irregularities in action against a visitor who was going through immigration clearance	Civil Aid Service	Full investigation - Unsubstantiated	Varied	Substantiated other than alleged	1
Case no. 2008/3238 Irregularities in action against a visitor who was going through immigration clearance	Immigration Department	Full investigation - Unsubstantiated	Varied	Substantiated other than alleged	3
Case no. 2008/6208 Delay in handling an application to reduce a sentence of imprisonment	Government Secretariat – Security Bureau	Inquiry - no maladministration found	Upheld	Unsubstantiated	1



Annex 13

Summary of Selected Review by Full Investigation

(Where applicable, the specific aspect of maladministration established is highlighted for clearer focus at the end of the case summary)

Civil Aid Service ("CAS") and Immigration Department ("Imm D")

Case No. OMB 2008/3237-3238 – Document inspection
Main allegation: *ultra vires* act by a CAS member in requiring the complainant's wife to produce her travel document for inspection – substantiated other than alleged



Details of Complaint

One day in May 2008, the complainant's wife, a Mainland citizen, arrived at an immigration control point from the Mainland accompanied by the complainant. She was twice asked by a CAS member to produce her travel document for inspection and she refused. The complainant alleged that the CAS member had acted *ultra vires* as he had no such legal authority.

Non-local Pregnant Visitors

2. Non-local pregnant visitors ("NLPVs") who appeared to be at an advanced stage of pregnancy were required to produce proof of booking for confinement with a Hong Kong hospital before entering the territory. Imm D would affix a special stamp on the travel documents of those who could produce such proof. With such a special landing endorsement, an NLPV would not need to produce proof of hospital booking when she visited Hong Kong again.

3. At the request of the Security Bureau, CAS deployed members to assist Imm D by checking NLPVs' travel documents for the special landing endorsement.

Outcome of First Investigation

4. We noted in our first investigation that Imm D had asked CAS members to "request" NLPVs to provide their travel documents for inspection. The CAS member concerned had indeed only "requested" the complainant's wife to present her travel document for inspection and his request required no legal authority. She was free not to accede to the request. The Ombudsman, therefore, considered the complaint unsubstantiated.

Outcome of Review

5. At the complainant's request, we reviewed the case by conducting another full investigation.

6. The crux of the issue lay in whether the CAS member had "required" the complainant's wife to present her travel document for inspection. If so, that would have been *ultra vires*. We found that while he might have been very zealous in making the "request", no coercion was involved. We, therefore, maintained that he had not acted *ultra vires*.

7. Notwithstanding this, the complainant's query about CAS members' authority to inspect travel documents was only natural, since NLPVs had never been informed of the inspection arrangement or their right to decline CAS members' "requests" to inspect their travel documents. Furthermore, Imm D had not clearly briefed CAS that its members had no legal authority for such act.

8. We found that the distinction between "require" and "request" is subtle and not easy at all for NLPVs or front-line staff, including the CAS member in this case, to appreciate. The inadequacy in the whole arrangement was evident. Imm D also admitted that CAS members' request for checking of travel documents might have given NLPVs a false impression that they were performing immigration examination under the law.

Conclusion and Recommendations

9. In this light, The Ombudsman concluded that the complaint was substantiated other than alleged against both Imm D and CAS.

10. The Ombudsman made a number of recommendations, including:

(a) if similar assistance from other organisations is required in future, Imm D should carefully consider the question of legal authority and clearly brief such organisations on the execution and implications of the duties assigned to them;

(b) before offering similar assistance, CAS should obtain accurate information and clear guidance from the requesting department, especially on the question of legal authority for performing the duties assigned; and

(c) Imm D should consider giving the inspection arrangement appropriate publicity to avoid misunderstanding.

A case of inadequate publicity and unclear instructions

Annex 14

Achievement of Performance Pledges

(1 April 2010 to 31 March 2011)

(A) Enquiries*

	Response Time		
By telephone or in person	**Immediate**	**Within 30 minutes**	**More than 30 minutes**
	12,093 (100%)	0	0
In writing	**Within 5 working days**	**Within 6-10 working days**	**More than 10 working days**
	174 (77.7%)	49 (21.9%)	1 (0.4%)

* Excluding enquiries on existing complaints.

(B) Complaints

	Response Time		
Initial assessment or acknowledgement	**Within 5 working days (target: not less than 80%)**	**Within 6-10 working days (target: not more than 20%)**	**More than 10 working days**
	4,491 (99.8%)	8 (0.2%)	0

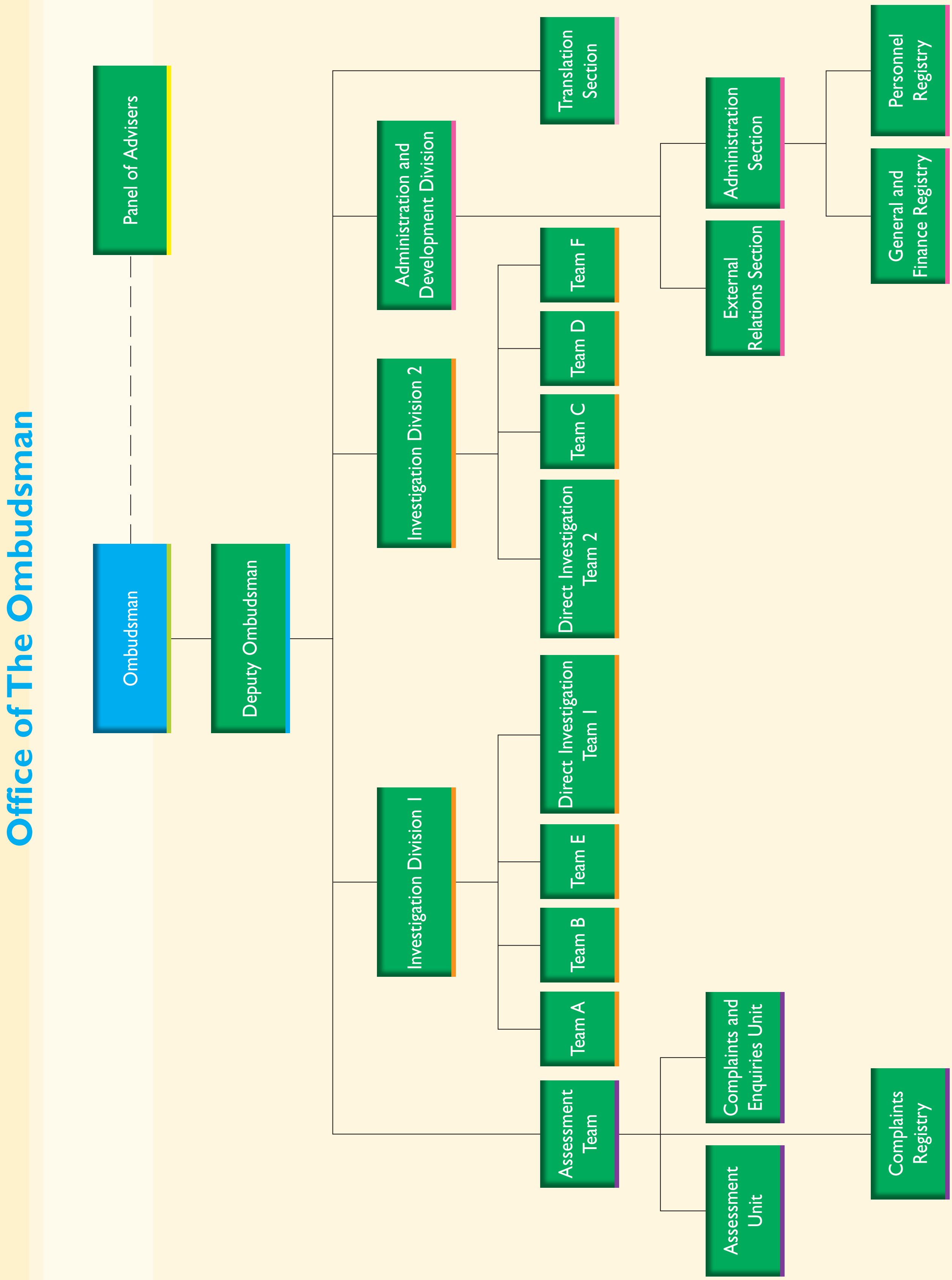
	Cases outside jurisdiction or under restriction			Other cases		
Cases concluded	**Within 10 working days (target: not less than 70%)**	**Within 11-15 working days (target: not more than 30%)**	**More than 15 working days**	**Less than 3 months (target: not less than 60%)**	**Within 3-6 months (target: not more than 40%)**	**More than 6 months**
	982 (83.4%)	171 (14.5%)	25 (2.1%)	3,172 (74.5%)	1,050 (24.6%)	37 (0.9%)

(C) Outreach talks

	Response Time	
Requests for outreach talks	**Within 10 working days**	**More than 10 working days**
	40 (100%)	0

Annex 15

Organisation Chart



Annex 16

Panel of Advisers

Building Surveying

Mr Raymond Yuk-ming CHAN

Correctional and Rehabilitation Services

Mr Andy Wang-tsang NG

Engineering

Dr Andrew Ka-ching CHAN

Mr Yan-kee CHENG

Mr Joseph Ming-kuen CHOW

Dr Raymond Chung-tai HO

Mr Edmund Kwong-ho LEUNG

Mr Vincent Kam-chuen TSE

Mr Chi-tin WAN

Legal

Mr Brian G. BAILLIE

Mrs Anne R. CARVER

Professor Johannes M. M. CHAN

Professor M. J. A. COORAY

Dr Man-chiu LO

Mr Benny Y. T. TAI

Professor Gui-guo WANG

Medical

Professor T. K. CHAN

Professor P. C. HO

Professor Kar-neng LAI

Professor Felice LIEH-MAK

Dr Chung-kwong WONG

* In alphabetical order

Annex 17

Visits to the Office of The Ombudsman

Date	Visitors
16 April 2010	Participants of the Training Course on Anti-corruption and Construction for officials from Ningbo Municipal Disciplinary Committee, organised by the Hong Kong Financial Services Institute
27 April 2010	Delegates from the Control Yuan, Taiwan
28 April 2010	Delegates from the Chinese Academy of Social Sciences, organised by the Independent Commission Against Corruption
11 May 2010	Scholars from Mainland China, organised by the Asian Legal Resource Centre
25 May 2010	Participants of the Seminar on Rule of Law and Governance for officials from Legislative Affairs Office of Sichuan Province, organised by the Hong Kong Institute for Public Administration
28 May 2010	Delegates from the Ethics Commission of Tanzania, organised by the Independent Commission Against Corruption
10 June 2010	Participants of the Training Scheme in Common Law for Mainland Officials 2009/10, organised by the Department of Justice
11 June 2010	Delegates from the Commission of Audit, Macao
15 September 2010	Participants of the Training Course on Administrative Enforcement and Supervision for officials from Shandong Provincial Department of Supervision, organised by the China Business Centre, Hong Kong Polytechnic University
30 September 2010	Law students from the Peking University and Wuhan University and NGO personnel from China, organised by the Asian Legal Resource Centre
18 October 2010	Participants of the Training Course on Anti-corruption and Construction for officials from Ningbo Municipal Disciplinary Committee, organised by the Hong Kong Financial Services Institute
18 October 2010	Delegates from the Henan Provincial Department of Supervision, organised by the Liaison Office of the Central People's Government
25 - 29 October 2010	Delegates from the Ministry of Supervision
3 November 2010	Mr M. Pourmohammadi, Inspector General, and delegates from the Government, Iran
25 November 2010	Mr Su Zelin, Vice President of the Supreme People's Court
1 December 2010	Mr Guo Xingwang, Director General of International Cooperation Bureau of the Supreme People's Procuratorate
3 December 2010	Participants of the 8th Postgraduate Certificate Course in Corruption Studies, organised by the School of Professional and Continuing Education, University of Hong Kong
20 January 2011	Mr Huang Liuquan, Director-General, Department of Law, Hong Kong and Macao Affairs Office of the State Council
23 February 2011	Delegates from the Fujian Provincial People's Procuratorate
23 February 2011	Delegates from the Fujian Provincial Department of Supervision, organised by the China Business Centre, Hong Kong Polytechnic University



Tables

Table 1
Caseload

	Reporting year[1]				
	06/07	07/08	08/09	09/10	10/11
I Enquiries	**15,626**	**12,169**	**14,005**	**13,789**	**12,227**
II Complaints					
(a) For processing	**6,282**	**5,929**	**6,671**	**5,869**	**6,467**
- Received	5,606	4,987	5,386 [853]	4,803 [393]	5,339 [627]
- Brought forward[2]	676	942	1,285	1,066	1,128
(b) Processed	**5,340**	**4,644**	**5,701 [1,225]**	**4,775 [402]**	**5,437 [611]**
Non-pursuable[3]	**3,624**	**2,667**	**3,017 [814]**	**2,560 [100]**	**2,381 [11]**
Pursued and concluded	**1,716**	**1,977**	**2,684 [411]**	**2,215 [302]**	**3,056 [600]**
- By inquiry[4]	1,643	1,938	2,437 [224]	2,086 [302]	2,894 [524]
- By full investigation[5]	71	38	247 [187]	126	155 [76]
- By mediation[6]	2	1	0	3	7
(c) Percentage processed = (b) / (a)	**85%**	**78.3%**	**85.5%**	**81.4%**	**84.1%**
(d) Carried forward = (a) – (b)	**942**	**1,285**	**970**	**1,094**	**1,030**
III Direct investigations completed	**4**	**4**	**6**	**7**	**6**
IV Direct investigation assessments completed	**5**	**2**	**4**	**8**	**10**

Note 1. From 1 April to 31 March of the next year.

Note 2. Including 96 and 34 re-opened cases in 2009/10 and 2010/11 respectively.

Note 3. Outside our jurisdiction or restricted by The Ombudsman Ordinance; withdrawn by complainant, discontinued or not undertaken by the Office, e.g. *subjudice* or lack of *prima facie* evidence.

Note 4. Pursued under section 11A of the Ordinance, for general cases.

Note 5. Pursued under section 12 of the Ordinance, for complex cases possibly involving serious maladministration, systemic flaws, etc.

Note 6. Pursued under section 11B of the Ordinance, for cases involving no, or only minor, maladministration.

[ ] Number of topical cases (not available before 2008/09).

- See "Glossary of Terms" at Annex 1 for detailed definitions of the above terms.

Table 2
Enquiries/Complaints Received

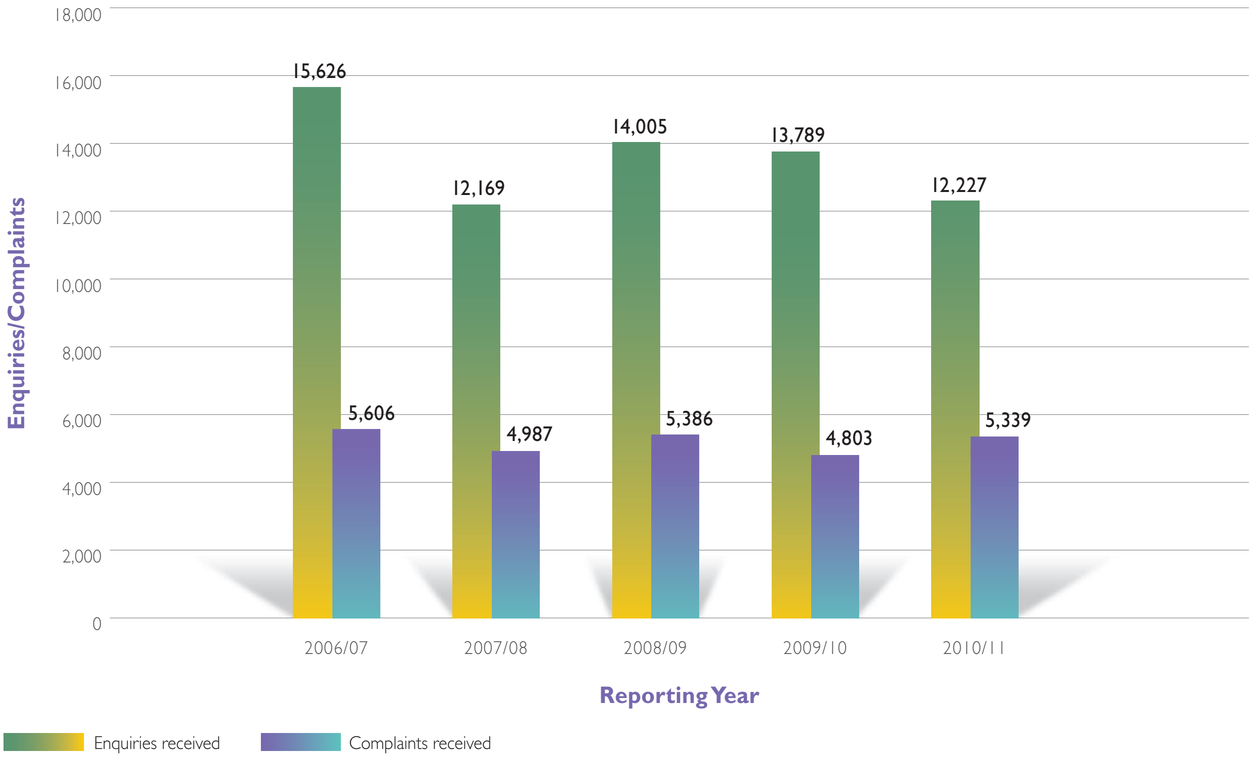


Table 3
Nature of Complaints Processed

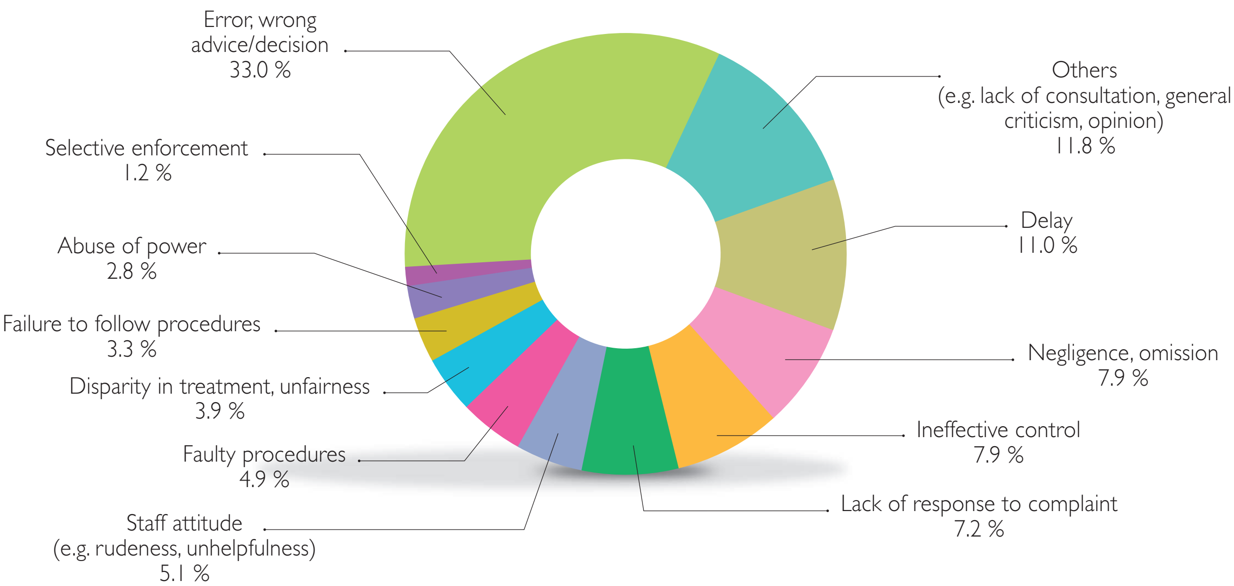


Table 4

Distribution of Enquiries/Complaints Received

Organisation		Enquiries	Complaints
Agriculture, Fisheries and Conservation Department	(AFCD)	47	58
Airport Authority	(AA)	7	2
Architectural Services Department	(Arch SD)	15	11
Audit Commission	(Aud)	2	2
Auxiliary Medical Service	(AMS)	2	3
Buildings Department	(BD)	396	341
Census and Statistics Department	(C & SD)	12	5
Civil Aid Service	(CAS)	7	7
Civil Aviation Department	(CAD)	5	4
Civil Engineering and Development Department	(CEDD)	7	19
Companies Registry	(CR)	14	8
Consumer Council	(CC)	54	26
Correctional Services Department	(CSD)	48	116
Customs and Excise Department	(C&ED)	36	25
Department of Health	(DH)	81	45
Department of Justice	(D of J)	27	22
Drainage Services Department	(DSD)	16	21
Electrical and Mechanical Services Department	(E & MSD)	31	23
Employees Retraining Board	(ERB)	23	15
Environmental Protection Department	(EPD)	48	195
Equal Opportunities Commission	(EOC)	31	21
Estate Agents Authority	(EAA)	11	6
Financial Reporting Council	(FRC)	0	1
Fire Services Department	(FSD)	66	50
Food and Environmental Hygiene Department	(FEHD)	646	459
General Office of the Chief Executive's Office	(GOCEO)	1	14
Government Flying Service	(GFS)	3	3
Government Laboratory	(Govt Lab)	0	1
Government Logistics Department	(GLD)	6	2
Government Property Agency	(GPA)	11	10
GS - Chief Secretary for Administration's Office	(GS-CS)	63	39
GS - Chief Secretary for Administration's Private Office	(GS-CSAPO)	0	1

Organisation		Enquiries	Complaints
GS - Civil Service Bureau	(GS-CSB)	15	13
GS - Commerce and Economic Development Bureau	(GS-CEDB)	8	7
GS - Constitutional and Mainland Affairs Bureau	(GS-CMAB)	3	8
GS - Development Bureau	(GS-DEVB)	9	26
GS - Education Bureau	(GS-EDB)	98	85
GS - Environment Bureau	(GS-ENB)	4	6
GS - Financial Secretary's Office	(GS-FS OFF)	11	6
GS - Financial Secretary's Private Office	(GS-FSPO)	0	1
GS - Financial Services and the Treasury Bureau	(GS-FSTB)	11	9
GS - Food and Health Bureau	(GS-FHB)	2	4
GS - Home Affairs Bureau	(GS-HAB)	3	7
GS - Labour and Welfare Bureau	(GS-LWB)	3	3
GS - Security Bureau	(GS-SB)	15	12
GS - Transport and Housing Bureau	(GS-THB)	14	13
Highways Department	(Hy D)	30	51
Home Affairs Department	(HAD)	141	141
Hong Kong Arts Development Council	(HKADC)	0	1
Hong Kong Examinations and Assessment Authority	(HKEAA)	30	26
Hong Kong Housing Authority	(HKHA)	39	17
Hong Kong Housing Society	(HKHS)	54	45
Hong Kong Monetary Authority	(HKMA)	40	55
Hong Kong Observatory	(HKO)	7	3
Hong Kong Police Force	(HKPF)	378	7
Hospital Authority	(HA)	400	209
Housing Department	(HD)	761	486
Immigration Department	(Imm D)	192	113
Independent Commission Against Corruption	(ICAC)	14	2
Information Services Department	(ISD)	1	2
Inland Revenue Department	(IRD)	78	40
Intellectual Property Department	(IPD)	3	1
Judiciary Administrator	(JA)	148	67
Kowloon-Canton Railway Corporation	(KCRC)	1	2
Labour Department	(LD)	133	79
Land Registry	(LR)	9	11
Lands Department	(Lands D)	283	458
Legal Aid Department	(LAD)	133	73

Table 4 Distribution of Enquiries/Complaints Received

Organisation		Enquiries	Complaints
Legislative Council Secretariat	(LCS)	4	2
Leisure and Cultural Services Department	(LCSD)	194	168
Mandatory Provident Fund Schemes Authority	(MPFA)	50	18
Marine Department	(MD)	10	4
Office of the Telecommunications Authority	(OFTA)	38	20
Official Receiver's Office	(ORO)	32	12
Planning Department	(Plan D)	15	177
Post Office	(PO)	91	69
Privacy Commissioner for Personal Data	(PCPD)	21	15
Radio Television Hong Kong	(RTHK)	5	4
Rating and Valuation Department	(RVD)	30	17
Registration and Electoral Office	(REO)	13	16
Securities and Futures Commission	(SFC)	53	55
Social Welfare Department	(SWD)	392	238
Student Financial Assistance Agency	(SFAA)	74	41
Television and Entertainment Licensing Authority	(TELA)	0	6
Trade and Industry Department	(TID)	11	6
Transport Department	(TD)	167	173
Treasury	(Try)	5	3
Urban Renewal Authority	(URA)	25	22
Vocational Training Council	(VTC)	25	16
Water Supplies Department	(WSD)	185	115
Total		**6,227**	**4,841**

Note 1. The total number of enquiries and complaints received in Table 1 are 12,227 and 5,339 respectively. They are different from the figures shown in Table 4 because -

(i) enquiries/complaints involving bodies outside The Ombudsman's jurisdiction; and

(ii) complaints involving organisations under Part 2 of Schedule 1 to The Ombudsman Ordinance but unrelated to The Code on Access to Information

are not shown in Table 4.

Note 2. Organisations under Schedule 1 to The Ombudsman Ordinance with no enquiries/complaints received in the reporting year are not shown.

Table 5

Distribution of Complaints Processed: 5,437 Cases

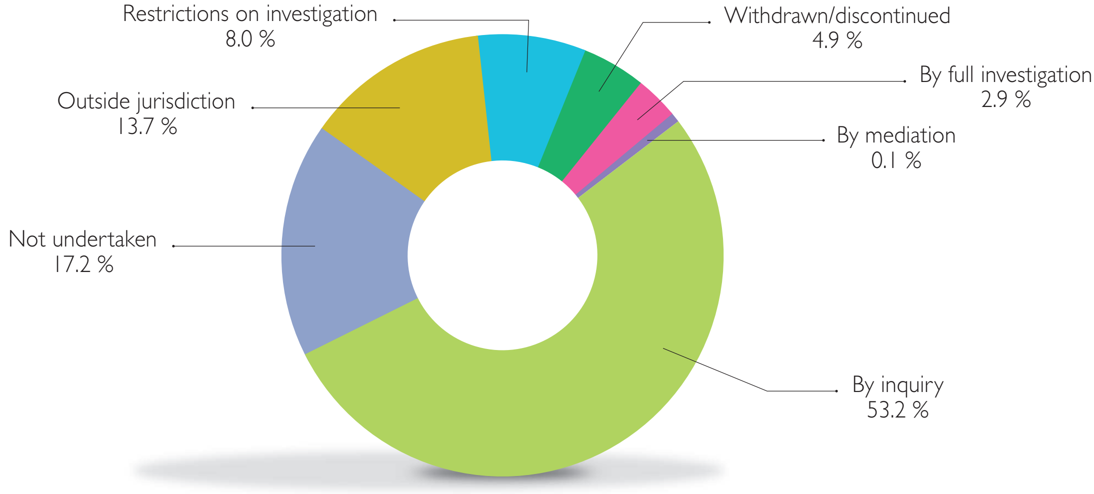
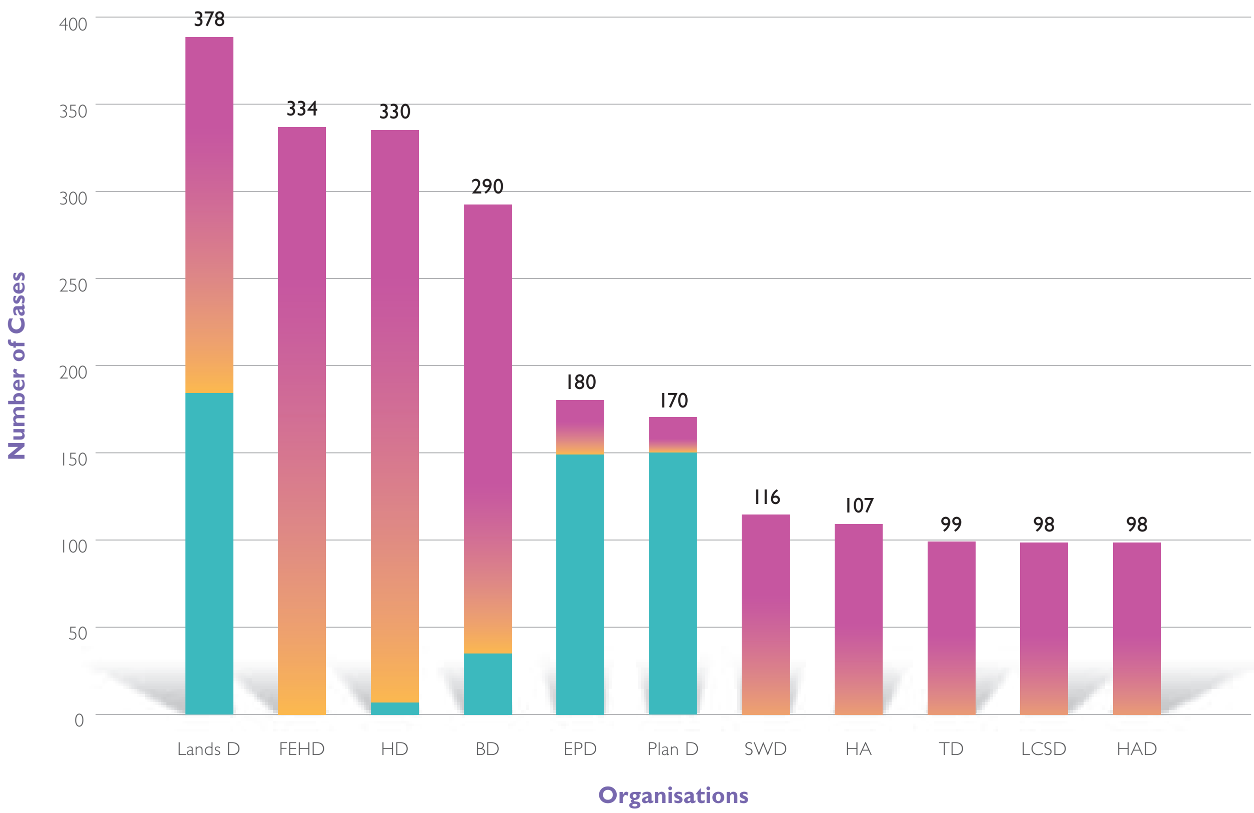


Table 6

Complaints Pursued and Concluded: Top Eleven Organisations



Note 1. "Complaints Pursued and Concluded" are cases handled by way of inquiry, full investigation or mediation.

Note 2. These top eleven organisations accounted for 72% of the 3,056 complaints pursued and concluded.

Note 3. ▬ signifies topical complaints (arising from the same social topics).

Table 7

Results of Complaints Concluded by Inquiry

Organisation	No. of complaints	Cases with maladministration found		Cases with no evidence of maladministration		Cases inconclusive		No. of Ombudsman's suggestions for improvement
Agriculture, Fisheries and Conservation Department	36	8	(22.2%)	28	(77.8%)			5
Airport Authority	3			3	(100%)			0
Architectural Services Department	3	2	(66.7%)	1	(33.3%)			2
Buildings Department	247	122	(49.4%)	123	(49.8%)	2	(0.8%)	5
Civil Aviation Department	1			1	(100%)			0
Civil Engineering and Development Department	12	1	(8.3%)	9	(75%)	2	(16.7%)	0
Companies Registry	4			4	(100%)			0
Consumer Council	14	7	(50%)	7	(50%)			3
Correctional Services Department	30	1	(3.3%)	27	(90%)	2	(6.7%)	4
Customs and Excise Department	12	2	(16.7%)	9	(75%)	1	(8.3%)	1
Department of Health	22	9	(40.9%)	13	(59.1%)			1
Department of Justice	1			1	(100%)			0
Drainage Services Department	17	3	(17.6%)	14	(82.4.%)			0
Electrical and Mechanical Services Department	14	4	(28.6%)	10	(71.4%)			0
Employees Retraining Board	6	1	(16.7%)	5	(83.3%)			1
Environmental Protection Department	180	3	(1.7%)	27	(15%)	150	(83.3%)	4
Equal Opportunities Commission	4	1	(25%)	2	(50%)	1	(25%)	1
Estate Agents Authority	2	1	(50%)	1	(50%)			0
Fire Services Department	15	1	(6.7%)	14	(93.3%)			2
Food and Environmental Hygiene Department	327	199	(60.9%)	124	(37.9%)	4	(1.2%)	20
General Office of the Chief Executive's Office	2	2	(100%)					0
Government Laboratory	1	1	(100%)					0
Government Logistics Department	1			1	(100%)			0

Organisation	No. of complaints	Cases with maladmin-istration found	Cases with no evidence of maladmin-istration	Cases inconclusive	No. of Ombudsman's suggestions for improvement
Government Property Agency	5	3 (60%)	2 (40%)		2
Government Secretariat					
- Chief Secretary for Administration's Office	18	8 (44.4%)	10 (55.6%)		0
- Civil Service Bureau	1		1 (100%)		0
- Commerce and Economic Development Bureau	4		4 (100%)		0
- Constitutional and Mainland Affairs Bureau	2		1 (50%)	1 (50%)	0
- Development Bureau	6	2 (33.3%)	4 (66.7%)		0
- Education Bureau	44	13 (29.6%)	29 (65.9%)	2 (4.5%)	5
- Environment Bureau	2		2 (100%)		0
- Financial Secretary's Office	1	1 (100%)			0
- Financial Services and the Treasury Bureau	5		5 (100%)		0
- Food and Health Bureau	2	1 (50%)	1 (50%)		0
- Home Affairs Bureau	2	1 (50%)	1 (50%)		0
- Labour and Welfare Bureau	3	2 (66.7%)	1 (33.3%)		0
- Security Bureau	2	1 (50%)	1 (50%)		0
- Transport and Housing Bureau	5		5 (100%)		0
Highways Department	34	4 (11.8%)	30 (88.2%)		0
Home Affairs Department	89	28 (31.5%)	60 (67.4%)	1 (1.1%)	8
Hong Kong Examinations and Assessment Authority	13	3 (23.1%)	10 (76.9%)		0
Hong Kong Housing Authority	9		9 (100%)		0
Hong Kong Housing Society	18	2 (11.1%)	15 (83.3%)	1 (5.6%)	0
Hong Kong Monetary Authority	31	9 (29.0%)	21 (67.8%)	1 (3.2%)	1
Hong Kong Observatory	1			1 (100%)	0
Hong Kong Police Force	5	2 (40%)	3 (60%)		0
Hospital Authority	106	31 (29.3%)	74 (69.8%)	1 (0.9%)	4
Housing Department	328	77 (23.5%)	248 (75.6%)	3 (0.9%)	8
Immigration Department	50	16 (32%)	33 (66%)	1 (2%)	11

Table 7 Results of Complaints Concluded by Inquiry

Organisation	No. of complaints	Cases with maladministration found	Cases with no evidence of maladministration	Cases inconclusive	No. of Ombudsman's suggestions for improvement
Independent Commission Against Corruption	2		2 (100%)		0
Inland Revenue Department	14	6 (42.9%)	8 (57.1%)		2
Intellectual Property Department	1	1 (100%)			0
Judiciary Administrator	9	4 (44.4%)	5 (55.6%)		0
Kowloon-Canton Railway Corporation	1		1 (100%)		0
Labour Department	43	6 (14.0%)	35 (81.4%)	2 (4.6%)	0
Land Registry	3		3 (100%)		0
Lands Department	334	42 (12.6%)	141 (42.2%)	151 (45.2%)	19
Legal Aid Department	26	3 (11.5%)	23 (88.5%)		0
Legislative Council Secretariat	2		1 (50%)	1 (50%)	0
Leisure and Cultural Services Department	91	35 (38.5%)	55 (60.4%)	1 (1.1%)	23
Mandatory Provident Fund Schemes Authority	10	6 (60%)	4 (40%)		3
Marine Department	6	1 (16.7%)	5 (83.3%)		0
Office of the Telecommunications Authority	11	3 (27.3%)	8 (72.7%)		0
Official Receiver's Office	7	1 (14.3%)	6 (85.7%)		0
Planning Department	166	2 (1.2%)	14 (8.4%)	150 (90.4%)	1
Post Office	35	25 (71.4%)	10 (28.6%)		2
Privacy Commissioner for Personal Data	7	3 (42.9%)	4 (57.1%)		1
Radio Television Hong Kong	2	1 (50%)	1 (50%)		0
Rating and Valuation Department	9	4 (44.4%)	5 (55.6%)		1
Registration and Electoral Office	6	4 (66.7%)	2 (33.3%)		1
Securities and Futures Commission	42	1 (2.4%)	41 (97.6%)		2
Social Welfare Department	113	36 (31.9%)	74 (65.5%)	3 (2.6%)	14
Student Financial Assistance Agency	30	15 (50%)	15 (50%)		10
Television and Entertainment Licensing Authority	1		1 (100%)		0
Trade and Industry Department	2	1 (50%)		1 (50%)	1

Organisation	No. of complaints	Cases with maladmin-istration found		Cases with no evidence of maladmin-istration		Cases inconclusive	No. of Ombudsman's suggestions for improvement
Transport Department	96	24	(25%)	72	(75%)		2
Treasury	2			2	(100%)		0
Urban Renewal Authority	7	2	(28.6%)	5	(71.4%)		3
Vocational Training Council	2			2	(100%)		0
Water Supplies Department	74	37	(50%)	37	(50%)		21
Total	**2,894**	**835**		**1,576**		**483**	**194**

Note 1. Organisations under Schedule 1 to The Ombudsman Ordinance with no complaints concluded by inquiry are not shown.

Note 2. The number of suggestions made may not be equal to the number of complaints.

Note 3. The Ombudsman may suggest improvement measures for all cases, irrespective of whether maladministration is found after inquiry.

Table 8

Results of Complaints Concluded by Full Investigation: 155 Cases

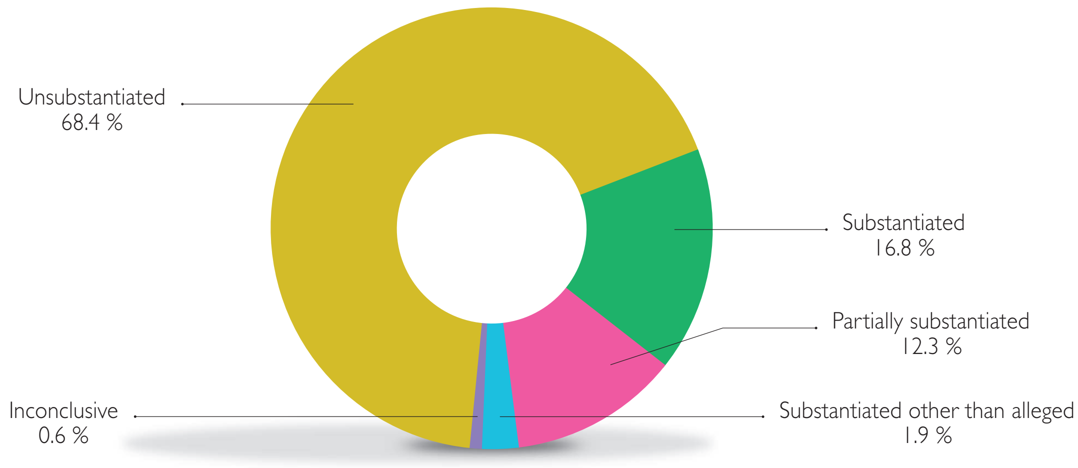


Table 9

Forms of Maladministration Substantiated by Full Investigation

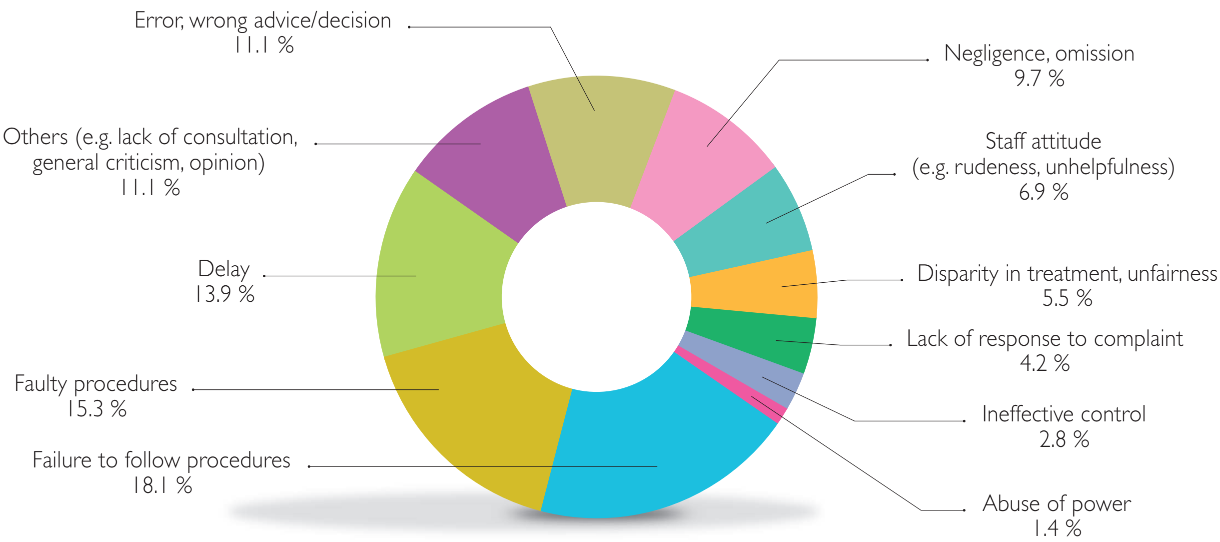


Table 10

Complaint Processing Time

Overall

TIME \ YEAR	06/07	07/08	08/09	09/10	10/11
Less than 3 months	76.3%	68.1%	72.5%	65.3%	80.1%
3 – 6 months	22.3%	30.4%	26.0%	33.1%	19.3%
More than 6 months	1.4%	1.5%	1.5%	1.6%	0.6%
Total	**5,340**	**4,644**	**5,701**	**4,775**	**5,437**

By Full Investigation and Other Modes

TIME \ YEAR	06/07	07/08	08/09	09/10	10/11
Full investigation					
Less than 3 months	0.0%	0.0%	10.9%	0.8%	50.3%
3 – 6 months	36.6%	23.7%	73.7%	54.0%	29.0%
More than 6 months	63.4%	76.3%	15.4%	45.2%	20.7%
Number of complaints	**71**	**38**	**247**	**126**	**155**
Other modes					
Less than 3 months	77.3%	68.7%	75.3%	67.0%	80.9%
3 – 6 months	22.1%	30.4%	23.9%	32.6%	19.0%
More than 6 months	0.6%	0.9%	0.8%	0.4%	0.1%
Number of complaints	**5,269**	**4,606**	**5,454**	**4,649**	**5,282**



Financial Statements

For
The Year Ended
31 March 2011

Independent auditor's report to The Ombudsman

(Established in Hong Kong pursuant to the Ombudsman Ordinance)

We have audited the financial statements of The Ombudsman set out on pages 3 to 21, which comprise the balance sheet as at 31 March 2011, the statement of income and expenditure, statement of comprehensive income, statement of changes in funds and cash flow statement for the year then ended and a summary of significant accounting policies and other explanatory information.

The Ombudsman's responsibility for the financial statements

The Ombudsman is responsible for the preparation of financial statements that give a true and fair view in accordance with Hong Kong Financial Reporting Standards issued by the Hong Kong Institute of Certified Public Accountants and for such internal control as The Ombudsman determine is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. This report is made solely to you, in accordance with our agreed terms of engagement, and for no other purpose. We do not assume responsibility towards or accept liability to any other person for the contents of this report.

We conducted our audit in accordance with Hong Kong Standards on Auditing issued by the Hong Kong Institute of Certified Public Accountants. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation of the financial statements that give a true and fair view in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by The Ombudsman, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Independent auditor's report to The Ombudsman (continued)

(Established in Hong Kong pursuant to the Ombudsman Ordinance)

Opinion

In our opinion, the financial statements give a true and fair view of the state of affairs of The Ombudsman as at 31 March 2011 and of its surplus and cash flows for the year then ended in accordance with Hong Kong Financial Reporting Standards.

Certified Public Accountants

8th Floor, Prince's Building
10 Chater Road
Central, Hong Kong
19 May 2011

Statement of income and expenditure for the year ended 31 March 2011

(Expressed in Hong Kong dollars)

	Note	2011	2010
Income			
Government subventions	4	$ 89,137,680	$ 90,051,657
Amortisation of Government subventions	4	2,965,040	2,965,040
Interest income on bank deposits		3,207,968	5,557,731
Other income		4,596	2,291
		$ 95,315,284	$ 98,576,719
Expenditure			
Operating expenses	5	(78,881,194)	(75,871,436)
Surplus for the year		$ 16,434,090	$ 22,705,283

Statement of comprehensive income for the year ended 31 March 2011

The Ombudsman had no components of comprehensive income other than "surplus for the year" in either of the periods presented. Accordingly, no separate statement of comprehensive income is presented as the Ombudsman's "total comprehensive income" was the same as the "surplus for the year" in both periods.

The notes on pages 9 to 21 form part of these financial statements.

Balance sheet at 31 March 2011

(Expressed in Hong Kong dollars)

	Note	2011	2010
ASSETS			
Non-current assets			
Property, plant and equipment	8	$ 79,509,974	$ 82,234,216
Current assets			
Deposits and prepayments		$ 609,414	$ 700,737
Interest receivable		1,443,348	1,606,153
Time deposits with original maturity over three months		289,367,000	275,609,000
Cash and cash equivalents	9	7,683,120	5,077,773
		$ 299,102,882	$ 282,993,663
Total assets		$ 378,612,856	$ 365,227,879
LIABILITIES			
Non-current liabilities			
Contract gratuity payable - non-current	10	$ 4,785,535	$ 3,383,900
Government subventions - non-current	4	73,912,360	76,877,401
		$ 78,697,895	$ 80,261,301
Current liabilities			
Other payables and accruals		$ 1,783,977	$ 1,857,474
Contract gratuity payable - current	10	2,536,103	3,948,314
Government subventions - current	4	2,965,041	2,965,040
		$ 7,285,121	$ 8,770,828
Total liabilities		$ 85,983,016	$ 89,032,129

Balance sheet at 31 March 2011 (continued)

(Expressed in Hong Kong dollars)

	Note	*2011*	*2010*
FUNDS			
Accumulated funds		$ 292,629,840	$ 276,195,750
Total funds and liabilities		$ 378,612,856	$ 365,227,879

Approved and authorised for issue by The Ombudsman on 19 May 2011



) The Ombudsman

The notes on pages 9 to 21 form part of these financial statements.

Statement of changes in funds for the year ended 31 March 2011

(Expressed in Hong Kong dollars)

		Accumulated funds
At 1 April 2009	$	253,490,467
Changes in funds for 2009/2010:		
Surplus for the year		22,705,283
At 31 March 2010	$	276,195,750
At 1 April 2010	$	276,195,750
Changes in funds for 2010/2011:		
Surplus for the year		16,434,090
At 31 March 2011	$	292,629,840

The notes on pages 9 to 21 form part of these financial statements.

Cash flow statement for the year ended 31 March 2011

(Expressed in Hong Kong dollars)

	Note	2011	2010
Operating activities			
Surplus for the year		$ 16,434,090	$ 22,705,283
Adjustments for:			
Interest income		(3,207,968)	(5,557,731)
Depreciation		3,905,560	3,876,448
Amortisation of Government subventions		(2,965,040)	(2,965,040)
Loss/(gain) on disposal of property, plant and equipment		2,044	(1,790)
Operating surplus before changes in working capital		$ 14,168,686	$ 18,057,170
Decrease in deposits and prepayments		91,323	96,825
(Decrease)/increase in other payables and accruals		(73,497)	245,530
Decrease in contract gratuity payable		(10,576)	(1,507,121)
Net cash generated from operating activities		$ 14,175,936	$ 16,892,404
Investing activities			
Interest received		$ 3,370,773	$ 7,583,742
Payments for purchase of property, plant and equipment		(1,184,762)	(1,158,818)
Increase in bank deposits with original maturity over three months		(289,367,000)	(275,609,000)
Bank deposits with original maturity over three months matured		275,609,000	244,193,000
Proceeds from disposal of property, plant and equipment		1,400	1,844
Net cash used in investing activities		$ (11,570,589)	$ (24,989,232)

Cash flow statement for the year ended 31 March 2011 (continued)

(Expressed in Hong Kong dollars)

	Note	2011	2010
Net increase/(decrease) in cash and cash equivalents		$ 2,605,347	$ (8,096,828)
Cash and cash equivalents at beginning of the year	9	5,077,773	13,174,601
Cash and cash equivalents at end of the year	9	$ 7,683,120	$ 5,077,773

The notes on pages 9 to 21 form part of these financial statements.

Notes to the financial statements

(Expressed in Hong Kong dollars unless otherwise indicated)

1 Status of The Ombudsman

The Ombudsman was established as a corporation by statute on 19 December 2001. The functions of The Ombudsman are prescribed by the Ombudsman Ordinance.

The address of its registered office is 30/F, China Merchants Tower, Shun Tak Centre, 168-200 Connaught Road Central, Hong Kong.

2 Significant accounting policies

(a) Statement of compliance

These financial statements have been prepared in accordance with all applicable Hong Kong Financial Reporting Standards ("HKFRSs"), which collective term includes all applicable individual Hong Kong Financial Reporting Standards, Hong Kong Accounting Standards ("HKASs") and Interpretations issued by the Hong Kong Institute of Certified Public Accountants ("HKICPA") and accounting principles generally accepted in Hong Kong. A summary of the significant accounting policies adopted by The Ombudsman is set out below.

The HKICPA has issued certain new and revised HKFRSs that are first effective or available for early adoption for the current accounting period of The Ombudsman. Note 3 provides information on any change in accounting policies resulting from initial application of these developments to the extent that they are relevant to The Ombudsman for the current and prior accounting periods reflected in these financial statements.

The Ombudsman has not applied any new standard or interpretation that is not yet effective for the current accounting period (note 15).

(b) Basis of preparation of the financial statements

The measurement basis used in the preparation of the financial statements is the historical cost basis.

The preparation of financial statements in conformity with HKFRSs requires management to make judgements, estimates and assumptions that affect the application of policies and reported amounts of assets, liabilities, income and expenditure. The estimates and associated assumptions are based on historical experience and various other factors that are believed to be reasonable under the circumstances, the results of which form the basis of making the judgements about carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates.

2 Significant accounting policies (continued)

(b) Basis of preparation of the financial statements (continued)

The estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognised in the period in which the estimate is revised if the revision affects only that period, or in the period of the revision and future periods if the revision affects both current and future periods.

(c) Property, plant and equipment and depreciation

Property, plant and equipment are stated at cost less accumulated depreciation and impairment losses (see note 2(e)).

Depreciation is calculated to write off the cost of items of property, plant and equipment less their estimated residual value, if any, using the straight-line method over their estimated useful lives as follows:

– Leasehold land classified as held under finance leases	Over unexpired term of lease
– Leasehold improvements	10 years
– Building	40 years
– Office equipment	5 years
– Office furniture	5 years
– Computer equipment	4 years
– Motor vehicles	5 years

Both the useful life of an asset and its residual value, if any, are reviewed annually.

Gains or losses arising from the retirement or disposal of an item of property, plant and equipment are determined as the difference between the net disposal proceeds and the carrying amount of the item and are recognised in the statement of income and expenditure on the date of retirement of disposal.

(d) Leased assets

(i) Classification of assets leased to The Ombudsman

Assets that are held by The Ombudsman under leases which transfer to The Ombudsman substantially all the risks and rewards of ownership are classified as being held under finance leases. Leases which do not transfer substantially all the risks and rewards of ownership to The Ombudsman are classified as operating leases.

2 Significant accounting policies (continued)

(d) Leased assets (continued)

(ii) Assets acquired under finance leases

Where The Ombudsman acquires the use of assets under finance leases, the amounts representing the fair value of the leased asset, or, if lower, the present value of the minimum lease payments, of such assets are included in property, plant and equipment and the corresponding liabilities, net of finance charges, are recorded as obligations under finance leases. Depreciation is provided at rates which write off the cost of the assets over the term of the relevant lease or, where it is likely The Ombudsman will obtain ownership of the asset, the life of the asset, as set out in note 2(c). Impairment losses are accounted for in accordance with the accounting policy as set out in note 2(e).

(iii) Operating lease charges

Where The Ombudsman has the use of other assets under operating leases, payments made under the leases are charged to the statement of income and expenditure in equal instalments over the accounting years covered by the lease term, except where an alternative basis is more representative of the pattern of benefits to be derived from the leased asset. Lease incentives received are recognised in statement of income and expenditure as an integral part of the aggregate net lease payments made. Contingent rentals are charged to statement of income and expenditure in the accounting period in which they are incurred.

(e) Impairment of assets

Internal and external sources of information are reviewed at each balance sheet date to identify indications that the property, plant and equipment may be impaired or an impairment loss previously recognised no longer exists or may have decreased.

If any such indication exists, the property, plant and equipment's recoverable amount is estimated. An impairment loss is recognised whenever the carrying amount of an asset exceeds its recoverable amount.

(i) Calculation of recoverable amount

The recoverable amount of a property, plant and equipment is the greater of its fair value less costs to sell and value in use. In assessing value in use, the estimated future cash flows are discounted to their present value using a pre-tax discount rate that reflects current market assessments of time value of money and the risks specific to the asset. Where the property, plant and equipment do not generate cash inflows largely independent of those from other assets, the recoverable amount is determined for the smallest group of assets that generates cash inflows independently (i.e. a cash-generating unit).

2 Significant accounting policies (continued)

(e) Impairment of assets (continued)

(ii) Reversals of impairment losses

An impairment loss is reversed if there has been a change in the estimates used to determine the recoverable amount.

A reversal of impairment losses is limited to the asset's carrying amount that would have been determined had no impairment loss been recognised in prior years. Reversals of impairment losses are credited to the statement of income and expenditure in the year in which the reversals are recognised.

(f) Other payable and accruals

Other payable and accruals are initially recognised at fair value and thereafter stated at amortised cost unless the effect of discounting would be immaterial, in which case they are stated at cost.

(g) Employee benefits

Salaries, gratuities, paid annual leave, leave passage and the cost to The Ombudsman of non-monetary benefits are accrued in the year in which the associated services are rendered by employees of The Ombudsman. Where payment or settlement is deferred and the effect would be material, these amounts are stated at their present values.

Contributions to Mandatory Provident Funds as required under the Hong Kong Mandatory Provident Fund Schemes Ordinance are recognised as an expenditure in the statement of income and expenditure as incurred.

(h) Provisions and contingent liabilities

Provisions are recognised for liabilities of uncertain timing or amount when The Ombudsman has a legal or constructive obligation arising as a result of a past event, it is probable that an outflow of economic benefits will be required to settle the obligation and a reliable estimate can be made. Where the time value of money is material, provisions are stated at the present value of the expenditure expected to settle the obligation.

Where it is not probable that an outflow of economic benefits will be required, or the amount cannot be estimated reliably, the obligation is disclosed as a contingent liability, unless the probability of outflow of economic benefits is remote. Possible obligations, whose existence will only be confirmed by the occurrence or non-occurrence of one or more future events are also disclosed as contingent liabilities unless the probability of outflow of economic benefits is remote.

2 Significant accounting policies (continued)

(i) Government grants

Government grants are recognised in the balance sheet initially when there is reasonable assurance that they will be received and that The Ombudsman will comply with the conditions attaching to them. Grants that compensate The Ombudsman for expenses incurred are recognised as revenue in the statement of income and expenditure on a systematic basis in the same periods in which the expenses are incurred. Grants that compensate The Ombudsman for the cost of an asset are deducted from the carrying amount of the asset and consequently are effectively recognised in the statement of income and expenditure over the useful life of the asset by way of reduced depreciation expense.

(j) Income recognition

Income is measured at the fair value of the consideration received or receivable. Provided it is probable that the economic benefits will flow to The Ombudsman and the income and expenditure, if applicable, can be measured reliably, income is recognised in the statement of income and expenditure as follows:

(i) Government subventions

Government subventions are accounted for on an accrual basis in accordance with note 2(i).

(ii) Interest income

Interest income is recognised as it accrues using the effective interest method.

(iii) Other income

Other income is recognised on an accrual basis.

(k) Related parties

For the purposes of these financial statements, a party is considered to be related to The Ombudsman if:

(i) the party has the ability, directly or indirectly through one or more intermediaries, to control The Ombudsman or exercise significant influence over The Ombudsman in making financial and operating policy decisions, or has joint control over The Ombudsman;

(ii) The Ombudsman and the party are subject to common control;

2 Significant accounting policies (continued)

(k) Related parties (continued)

(iii) the party is a member of key management personnel of The Ombudsman or a close family member of such an individual, or is an entity under the control, joint control or significant influence of such individuals;

(iv) the party is a close family member of a party referred to in (i) or is an entity under the control, joint control or significant influence of such individuals; or

(v) the party is a post-employment benefit plan which is for the benefit of employees of The Ombudsman or of any entity that is a related party of The Ombudsman.

Close family members of an individual are those family members who may be expected to influence, or be influenced by, that individual in their dealings with the entity.

3 Changes in accounting policies

The HKICPA has issued two revised HKFRSs, a number of amendments to HKFRSs and two new Interpretations that are first effective for the current accounting period of the company. Of these, Improvements to HKFRSs (2009) is relevant to The Ombudsman's financial statements.

The impact of the Improvements to HKFRSs (2009) is discussed below:

As a result of an amendment to HKAS 17, *Leases*, arising from the *"Improvements to HKFRSs (2009)"* omnibus standard, The Ombudsman has re-evaluated the classification of its interests in leasehold land as to whether, in The Ombudsman's judgement, the lease transfers substantially all the risks and rewards of ownership of the land such that The Ombudsman is in a position economically similar to that of a purchaser. The Ombudsman has concluded that there is a change of classification of The Ombudsman's leasehold land interests located in the Hong Kong Special Administrative Region. These leasehold interests will no longer be classified by The Ombudsman as operating leases as The Ombudsman considers that it is in a position economically similar to that of a purchaser. This change in accounting policy has no material impact on the current or previous periods as the lease premiums in respect of all such leases are fully paid and are being amortised over the remaining length of the lease term.

4 Government subventions/amortisation of Government subventions

Government subventions represent the funds granted by the Government for daily operations of The Ombudsman. Amortisation of Government subventions represents the funds granted by the Government for prepaid operating lease payments, the purchase of buildings and certain leasehold improvements. Subvention income is recognised on a straight line basis over the period of the lease term or the useful life of the assets, which are estimated to be 54 years, 40 years and 10 years, respectively.

	2011	*2010*
Government subventions	$ 76,877,401	$ 79,842,441
Current portion of government subventions	(2,965,041)	(2,965,040)
	$ 73,912,360	$ 76,877,401

5 Operating expenses

	2011	*2010*
Employee benefit expense (note 6)	$ 66,649,755	$ 65,472,567
Depreciation of property, plant and equipment	3,905,560	3,876,448
Rates and management fee	2,118,415	2,145,876
Operating lease rentals in respect of parking spaces	91,200	91,200
Auditor's remuneration	54,000	50,000
Announcement of public interest expense	2,186,927	1,312,576
Video production expense	800,125	-
Other expenses	3,075,212	2,922,769
	$ 78,881,194	$ 75,871,436

6 Employee benefit expense

	2011	*2010*
Salary and allowances	$ 58,892,000	$ 57,638,893
Contract gratuity	5,481,298	5,275,472
Pension costs - MPF scheme	1,156,469	1,210,587
Unutilised annual leave	(33,649)	336,395
Other employee benefit expenses	1,153,637	1,011,220
	$ 66,649,755	$ 65,472,567

7 Key management compensation

	2011	*2010*
Short-term employee benefits	$ 11,612,905	$ 12,148,098
Post-employment benefits	1,693,419	1,657,971
	$ 13,306,324	$ 13,806,069

8 Property, plant and equipment

	Interests in leasehold land held for own use under finance lease	*Building*	*Leasehold improvements*	*Office furniture*	*Office equipment*	*Computer equipment*	*Motor vehicles*	*Total*
Cost:								
At 1 April 2009	$ 74,900,000	$ 16,800,000	$ 11,571,835	$ 442,778	$ 703,775	$ 2,060,608	$ 1	$ 106,478,997
Additions	-	-	362,968	23,558	27,630	564,862	179,800	1,158,818
Disposals	-	-	-	-	-	(1,178)	-	(1,178)
At 31 March 2010	$ 74,900,000	$ 16,800,000	$ 11,934,803	$ 466,336	$ 731,405	$ 2,624,292	$ 179,801	$ 107,636,637
Accumulated depreciation:								
At 1 April 2009	$ 9,880,704	$ 2,962,438	$ 7,574,443	$ 49,782	$ 218,909	$ 840,821	$ -	$ 21,527,097
Depreciation	1,394,220	420,000	1,179,802	92,472	144,777	612,665	32,512	3,876,448
Written back on disposal	-	-	-	-	-	(1,124)	-	(1,124)
At 31 March 2010	$ 11,274,924	$ 3,382,438	$ 8,754,245	$ 142,254	$ 363,686	$ 1,452,362	$ 32,512	$ 25,402,421
Net book value:								
At 31 March 2010	$ 63,625,076	$ 13,417,562	$ 3,180,558	$ 324,082	$ 367,719	$ 1,171,930	$ 147,289	$ 82,234,216

8 Property, plant and equipment (continued)

	Interests in leasehold land held for own use under finance lease	*Building*	*Leasehold improvements*	*Office furniture*	*Office equipment*	*Computer equipment*	*Motor vehicles*	*Total*
Cost:								
At 1 April 2010	$ 74,900,000	$ 16,800,000	$ 11,934,803	$ 466,336	$ 731,405	$ 2,624,292	$ 179,801	$ 107,636,637
Additions	-	-	835,584	57,587	88,530	203,061	-	1,184,762
Disposals	-	-	-	-	(86,596)	(903)	-	(87,499)
At 31 March 2011	$ 74,900,000	$ 16,800,000	$ 12,770,387	$ 523,923	$ 733,339	$ 2,826,450	$ 179,801	$ 108,733,900
Accumulated depreciation:								
At 1 April 2010	$ 11,274,924	$ 3,382,438	$ 8,754,245	$ 142,254	$ 363,686	$ 1,452,362	$ 32,512	$ 25,402,421
Depreciation	1,394,220	420,000	1,220,953	98,168	136,219	600,040	35,960	3,905,560
Written back on disposal	-	-	-	-	(83,203)	(852)	-	(84,055)
At 31 March 2011	$ 12,669,144	$ 3,802,438	$ 9,975,198	$ 240,422	$ 416,702	$ 2,051,550	$ 68,472	$ 29,223,926
Net book value:								
At 31 March 2011	$ 62,230,856	$ 12,997,562	$ 2,795,189	$ 283,501	$ 316,637	$ 774,900	$ 111,329	$ 79,509,974

The Ombudsman's interests in leasehold land is held under long lease.

9 Cash and cash equivalents

	2011	2010
Cash at bank	$ 7,678,120	$ 5,072,773
Cash in hand	5,000	5,000
	$ 7,683,120	$ 5,077,773

10 Contract gratuity payable

The amount represents the gratuity payable to staff on expiry of their employment contract. The amount of gratuity ranges from 10% to 25% of the basic salary less employer's contributions to Mandatory Provident Fund.

11 Taxation

The Ombudsman is exempted from taxation in respect of the Inland Revenue Ordinance in accordance with the Schedule 1A Section 5(1) of the Ombudsman Ordinance.

12 Commitments

(a) Capital commitments outstanding at 31 March 2011 not provided for in the financial statements were as follows:

	2011	2010
Contracted for	$ 15,110	$ 800,000

(b) At 31 March 2011, the total future aggregate minimum lease payments under non-cancellable operating leases in respect of parking spaces are payable as follows:

	2011	2010
Within 1 year	$ 7,600	$ 7,600

13 Management of accumulated funds

The Ombudsman's primary objectives when managing its accumulated funds are to safeguard The Ombudsman's ability to continue as a going concern. The Ombudsman is not subject to externally imposed requirements relating to its accumulated funds.

14 Financial risk management

Risk management is carried out by the accounting department under policies approved by The Ombudsman. The accounting department identifies and evaluates financial risks in close co-operation with the operating units. The Ombudsman provides written principles for overall risk management such as interest-rate risk, use of financial instruments and investing excess liquidity.

Exposure to credit, liquidity and interest rate risks are described below:

(a) *Credit risk*

The Ombudsman's credit risk is primarily attributable to cash and cash equivalents. Management has a credit policy in place and the exposure to this credit risk is monitored on an ongoing basis.

Cash is deposited with financial institutions with sound credit ratings to minimise credit exposure.

The maximum exposure to credit risk is represented by the carrying amount of each financial asset in the balance sheet. The Ombudsman does not provide any guarantees which would expose The Ombudsman to credit risk.

(b) *Liquidity risk*

The Ombudsman's policy is to regularly monitor current and expected liquidity requirements and to ensure that it maintains sufficient reserves of cash to meet its liquidity requirements in the short and longer term.

The following table details the remaining contractual maturities at the balance sheet date of The Ombudsman's financial liabilities, which are based on contractual undiscounted cash flows and the earliest date The Ombudsman can be required to pay:

	2011				
	Carrying amount	*Total contractual undiscounted cash flows*	*Within 1 year or on demand*	*More than 1 year but less than 2 years*	*More than 2 years but less than 5 years*
Contract gratuity payable	$ 7,321,638	$ (7,321,638)	$ (2,536,103)	$ (2,661,862)	$ (2,123,673)
Other payables and accruals	1,783,977	(1,783,977)	(1,783,977)	-	-
	$ 9,105,615	$ (9,105,615)	$ (4,320,080)	$ (2,661,862)	$ (2,123,673)

14 Financial risk management (continued)

(b) Liquidity risk (continued)

	2010				
	Carrying amount	*Total contractual undiscounted cash flows*	*Within 1 year or on demand*	*More than 1 year but less than 2 years*	*More than 2 years but less than 5 years*
Contract gratuity payable	$ 7,332,214	$ (7,332,214)	$ (3,948,314)	$ (1,741,289)	$ (1,642,611)
Other payables and accruals	1,857,474	(1,857,474)	(1,857,474)	-	-
	$ 9,189,688	$ (9,189,688)	$ (5,805,788)	$ (1,741,289)	$ (1,642,611)

(c) Interest rate risk

Interest rate risk is the risk that the value of a financial instrument will fluctuate due to changes in market interest rates. The Ombudsman's only exposure to interest rate risk is via its bank balances which bear interest at market rates.

Sensitivity analysis

At 31 March 2011, it is estimated that a general increase/decrease of 100 basis points in interest rates, with all other variables held constant, would increase/decrease The Ombudsman's income and accumulated funds by approximately $2,971,000 (2010: $2,807,000).

The sensitivity analysis above has been determined assuming that the change in interest rates had occurred at the balance sheet date and had been applied to the exposure to interest rate risk for financial instruments in existence at that date. The 100 basis points increase or decrease represents management's assessment of a reasonably possible change in interest rates over the period until the next annual balance sheet date. The analysis is performed on the same basis for 2010.

(d) All financial instruments are carried at amounts not materially different from their fair values as at 31 March 2011 and 2010.

15 Possible impact of amendments, new standards and interpretations issued but not yet effective for the year ended 31 March 2011

Up to the date of issue of these financial statements, the HKICPA has issued a number of amendments, new standards and interpretations which are not yet effective for the year ended 31 March 2011 and which have not been adopted in these financial statements.

The Ombudsman is in the process of making an assessment of what the impact of these amendments, new standards and new interpretations is expected to be in the period of initial application. So far it has concluded that the adoption of them is unlikely to have a significant impact on The Ombudsman's results of operations and financial position.

16 Comparative figures

As a result of the application of an amendment to HKAS 17, *Leases*, certain comparative figures have been adjusted to conform to current year's presentation. Further details of this development are disclosed in note 3.